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BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION

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IN RE: VIRGIN MOBILE IPO LITIGATION ) MDL DOCKET NO. 1931

**REPLY MEMORANDUM OF LAW OF THE DEFENDANTS IN FURTHER  
SUPPORT OF THEIR MOTION FOR TRANSFER OF RELATED SECURITIES  
ACTIONS TO THE SOUTHERN DISTRICT OF NEW YORK**

Defendants Virgin Mobile USA, Inc., Daniel H. Schulman, Jonathan Marchbank, John D. Feehan, Jr., Frances Brandon-Farrow, Douglas B. Lynn, Mark Poole, Robert Samuelson, L. Kevin Cox, Thomas O. Ryder, Kenneth T. Stevens, Sprint Nextel Corp., Corvina Holdings, Ltd. (the "Moving Defendants"),<sup>1</sup> respectfully submit this reply memorandum of law in response to the opposition filed by plaintiffs Michael Volpe, Aaron Cheng, Zhao Li, John Mekari and Alan Whiting (the "Volpe Group")<sup>2</sup> and in further support of the Moving Defendants' motion for transfer and consolidation, pursuant to 28 U.S.C. § 1407, of all related securities actions to the Southern District of New York.<sup>3</sup>

**INTRODUCTION**

In its opposition, the Volpe Group concedes that these actions *should be consolidated*, stating that they "do not disagree that ultimately, the consolidation of the four cases will conserve the resources of the parties and the courts" and admitting that they "argued to the

<sup>1</sup> The Moving Defendants have consulted with counsel for the remaining defendants in these actions (Lehman Brothers, Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bear, Stearns & Co., Inc., Raymond James & Associates, Inc. and Thomas Weisel Partners, LLC) and have been advised that these defendants concur with this motion.

<sup>2</sup> See Opposition Of Michael Volpe, Aaron Cheng, Zhao Li, John Mekari, And Alan Whiting To Defendant Virgin Mobile's Motion To Transfer And Consolidate For Pretrial Proceedings ("Opp. Br.").

<sup>3</sup> See Memorandum Of Law Of The Defendants In Support Of Their Motion For Transfer Of Related Securities Actions To The Southern District Of New York Pursuant To 28 U.S.C. § 1407 For Coordinated Or Consolidated Proceedings ("Moving Br.").

District of New Jersey Court that consolidation is both warranted and necessary.” Opp. Br. at 5.

All parties therefore agree that consolidation is proper. Defendants have demonstrated that there is ample basis for the Panel to consolidate these cases under 28 U.S.C. §1407. Therefore, the sole issue before this Panel is where the cases should be consolidated.

The Volpe Group’s reasons for transferring these cases to the District of New Jersey (as opposed to the Southern District of New York) are also unavailing. First, the possibility that the Volpe Group may be named lead plaintiff *at some point in the future* is not relevant to the Panel’s determination of the proper transferee court at this juncture. The PSLRA specifically provides that the selection of a lead plaintiff should only occur *after* a motion for consolidation has been decided. Until that time, the Volpe Group’s preference of forum should be given the same minimal weight as that of any other plaintiff in a securities class action. Second, the Panel must assess the preferences of and convenience to all the parties and potential witnesses, not just the few highlighted by the Volpe Group. In these cases the overwhelming majority of the litigants (including the defendants located in New Jersey) favor transfer to New York. Furthermore, any inconvenience to parties located in New Jersey having to litigate this case in New York is minimal due to the close proximity of the two districts (with their court houses a scant 10 miles from one another). For parties located farther away, travel to New York City is more convenient. Finally, the Southern District is well-experienced in handling complex cases and has sufficient resources to efficiently and expeditiously handle these cases.

## **ARGUMENT**

### **I. Consolidation Of These Actions Is Appropriate**

The Volpe plaintiffs have conceded that consolidation of these actions is appropriate, stating in their opposition brief that they “do not disagree that ultimately, the consolidation of the four cases will conserve the resources of the parties and the courts.” Opp. Br.

at 5. Indeed, the Volpe Group has already “argued to the District of New Jersey Court that consolidation is both warranted and necessary.” *Id.*

Further, Plaintiffs have not contested the importance of consolidation and transfer in securities class actions in order to eliminate the possibility of inconsistent pretrial rulings on such matters as class certification. *See, e.g., In re Ace Ltd. Sec. Litig.*, 370 F. Supp. 2d 1353, 1355 (J.P.M.L. 2005) (finding that “[c]entralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions of class certification), and conserve the resources of the parties, their counsel and the judiciary”).

In light of Plaintiffs’ admission and their failure to respond to Defendants’ showing that consolidation and transfer are critical in this case to avoid the possibility of inconsistent rulings, Plaintiffs’ argument that the Panel should not transfer and consolidate these cases under §1407 makes no sense. Plaintiffs appear to argue that this Panel should refuse consolidation so that Defendants can make motions to transfer venue and then to consolidate in one of the District Courts in which these actions have been filed. *Opp. Br.* at 2, 4, 8-9. But it is precisely to avoid such a waste of effort and the possibility that District Courts might have divergent views of the appropriate forum for a pending action that §1407 was enacted. The facts here are simple: every party to these cases agrees these cases should be transferred to a single district and consolidated. Section 1407 provides more than adequate grounds for this Panel to do so. The only contested issue before this Panel is where the cases should be consolidated.

**II. The Forum Favored By A “Purported” Lead Plaintiff Should Not Be Given Preference Over The Forum Favored By The Majority Of Litigants And Where The Majority Of Cases Are Pending**

The Volpe Group provides no legal support for its bald proposition that its forum choice should be given extra weight because it is “likely” to be chosen as the lead plaintiff in these actions. As an initial matter, the forum preference of the Volpe Group should be accorded the

same minimal weight as any other plaintiff in a securities class action such as this, regardless of whether they are chosen as the lead plaintiff.<sup>4</sup> As one court noted, “while it is axiomatic that a plaintiff’s choice of forum is entitled to great consideration, the adage has little weight in stockholder class actions.” *AtheroGenics Sec. Litig.*, No. 05 Civ. 00061 (RJH), 2006 U.S. Dist. LEXIS 15786 at \*9 (S.D.N.Y. 2006) (quoting *Shulof v. Westinghouse Elec. Corp.*, 402 F.Supp. 1262, 1263 (S.D.N.Y. 1975)).

Second, the Private Securities Litigation Reform Act (“PSLRA”), which provides for the appointment of lead plaintiff, specifically directs that the decision on any such motions should be stayed until *after* any pending motion for consolidation has been decided.<sup>5</sup> See 15 U.S.C. § 78u-4(a)(3)(B)(ii) (“If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) [for appointing lead plaintiff] until after the decision on the motion to consolidate is rendered.”). Courts have interpreted this statute to apply to motions for transfer and consolidation

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<sup>4</sup> In its Opposition Brief, the Volpe Group states that the jurisprudence of the Panel “favors as the transferee court the forum desired by the lead plaintiff in a securities class action.” Opp. Br. at 9. In support of this broad assertion about the Panel’s view on PSLRA actions, the Group cites a single, entirely inapposite case. In that case, the Panel simply noted that the lead plaintiffs—who, unlike Volpe, had already been appointed as such—supported the defendants’ motion for a Section 1407 transfer. *In re Marsh & McLennan Companies, Inc. Sec. Lit* 429 F. Supp. 2d, 1376, 1377 (J.P.M.L. 2006). The Panel then went on to recite its well-established formula for Section 1407 transfer in securities class actions: “Centralization under Section 1407 is necessary in order to eliminate duplicative discover, prevent inconsistent pretrial rulings, and conserve the resources of the parties” where “actions involve common questions of fact.” *Id.* at 1377-1378.

<sup>5</sup> On January 22, 2008 the defendants in these cases filed motions to stay the proceedings pending in both the District of New Jersey and the Southern District of New York specifically arguing it would be a waste of judicial resources and potentially result in conflicting decisions for either court to appoint a lead plaintiff prior to a ruling on the motion to transfer pending before this Panel. See Exhib. 1, (Memorandum of Law Supporting Stay filed in the District of New Jersey) and Exhib. 2 (Memorandum of Law Supporting Stay filed in the Southern District of New York).

under section 1407. *See Sevel v. AOL Time Warner, Inc.*, 232 F. Supp. 2d 615, 617 (E.D. Va.

2002) (granting stay pending MDL decision). As the *Sevel* court explained:

From the [PSLRA] statute, the Court finds it evident that it must not determine a lead plaintiff or approve the choice of lead counsel until after the decision on the motion to consolidate before the MDL has been rendered.

*Id.*

Furthermore, the Volpe Group's argument misses the point that a primary purpose of the § 1407 transfer is to have the *transferee* court decide important pretrial motions, such as the appointment of lead plaintiff. Giving extra weight to a "presumptive" lead plaintiff at this juncture subverts the authority of the transferee judge and undermines the purpose of the transfer statute. Accordingly, the forum preference of the Volpe Group should be accorded the same minimal weight as any other plaintiff in a securities class action such as this.<sup>6</sup>

Instead, the Panel should give more weight to the transferee forum preferred by the clear majority of the litigants and where the majority of the cases are pending. *See, e.g., In re Cutter Labs., Inc. "Braunwald-Cutter" Aortic Heart Valve Prods Liab. Litig.*, 465 F. Supp. 1295, 1298 (J.P.M.L. 1979) (transferring actions to forum favored by "a majority of the parties"); *In re Methionine Antitrust Litig.*, MDL No. 1311 (JFN), 1999 U.S. Dist. LEXIS 19206 (J.P.M.L. Dec. 8, 1999) (transferring cases to forum where majority of cases are pending). In this litigation, the majority of cases are pending in the Southern District and an overwhelming majority of the litigants—all 19 defendants and two of the three named plaintiffs<sup>7</sup>—favor transfer to the Southern

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<sup>6</sup> The Volpe Group's argument that the New Jersey case should also receive preference because it is somehow "more advanced" is completely unsupported. *See* Opp. Br. at 6. To the extent this argument is also based on future events, it is equally flawed.

<sup>7</sup> On January 30, 2008, the plaintiff in *Joseph v. Virgin Mobile USA, Inc., et al.*, 07-cv-11060 (S.D.N.Y. Dec. 6, 2007) voluntarily withdrew his complaint. *See* Exhib. 3 (Notice of Voluntary Withdrawal).

District of New York.<sup>8</sup> See 17-112 Moore's Fed. Practice – Civil § 112.04[2] (choice of the majority is particularly important in cases where “the other convenience factors seem equally balanced”).

Furthermore, given the close proximity of the two potential transferee districts (with their court houses a scant 10 miles apart), the Volpe Group cannot credibly argue that it would be inconvenient for its plaintiffs to litigate their case in the Southern District.<sup>9</sup> Indeed, when the convenience of *all* the parties is considered,<sup>10</sup> the Southern District is the preferable forum. First, more defendants have their principal place of business in New York City than any other single forum (including New Jersey). As such, critical parties, witnesses and documents are likely to be found there.<sup>11</sup> Second, as the center of the country's financial services and securities industry, it is likely that more members of the putative class will be located in the Southern District. Finally, the Southern District is a more convenient forum than the District of New Jersey for the other parties and witnesses who are spread across the United States. See Moving Br. at 13-14.

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<sup>8</sup> The overwhelming nature of the majority does not change even if the additional plaintiffs mentioned in the Volpe Group's opposition are included (*i.e.*, 21 out of 26 litigants would still favor transfer to the Southern District).

<sup>9</sup> As the Volpe Group concedes in its opposition, “both courthouses are served by the same transportation facilities and are similarly situated near the location of the parties, counsel, and witnesses.” Opp. Br. at 10.

<sup>10</sup> See *In re Library Editions of Children's Books*, 297 F. Supp. 385, 386 (J.P.M.L. 1968) (“Panel must weigh the interests of all the plaintiffs and all the defendants”).

<sup>11</sup> The Volpe Group argues that “[t]he Panel has . . . consistently found that the convenience of the parties and witnesses is best served by centralization of litigation in the district where the defendant's headquarters is located.” Opp. Br. at 10. Yet the facts of the cases they cite in support of this proposition lend scant weight to their argument, and are easily distinguished from the facts currently before the Panel. For example, in *In re General Motors Onstar Contract Lit.*, the Panel transferred actions from the Northern District of California to the Eastern District of Michigan, where the defendants' facilities were located. 502 F. Supp. 2d 1357, 1358 (J.P.M.L. 2007). Clearly, a situation in which the courts favored, respectively, by plaintiffs and defendants are located 10 miles apart is quite different from one where over two thousand miles separate the courthouses. The same distinction can be applied to *In re H&R Block, Inc., Express IRA Marketing Lit.*, where the actions to be consolidated were in district courts in Illinois, Missouri, and Florida. 444 F. Supp. 2d 1339, 1340 (J.P.M.L. 2006).

### **III. The Southern District Of New York Has The Resources And Judicial Experience To Properly Conduct This Litigation**

The Southern District has more than sufficient resources to handle these litigations with its 26 active district judges, 18 senior judges, and 15 magistrate judges and has an overall docket that is at least as fast (if not faster by some measures) as the docket in the District of New Jersey. For example, while the median times from filing to disposition is 8.2 months in New Jersey (vs. 8.3 months in the Southern District), the median times from filing to *trial* is significantly longer in New Jersey (at 33 months) versus the Southern District (at 25.7 months). *See* Exhib. 4 (Docket Comparison Reports).

Furthermore, the Volpe Group's argument that Judge Griesa would be more burdened taking on a new MDL case than Judge Wigenton is without merit. Although the MDL case *In re Abercrombie & Fitch Co. Sec. Lit.* is technically still pending before Judge Griesa, an Order and Final Judgment giving effect to a settlement in that action was entered on February 5, 2007. *See* Exhib. 5 at entry 85 (*In re Abercrombie & Fitch Co. Sec. Lit.* Docket Sheet). Furthermore, in comparing the active MDL actions pending before both judges, it appears that the sole remaining case before Judge Griesa, *In re Elevator and Escalator Antitrust Lit.*, is no more burdensome than that before Judge Wigenton: no substantive activity has taken place in *In re Elevator and Escalator* since July 25, 2005, when the court ordered that answers to the amended complaints be filed on August 8 of that same year. *See* Exhib. 6 at entry 15 (*In re Elevator and Escalator* Docket Sheet).

### **CONCLUSION**

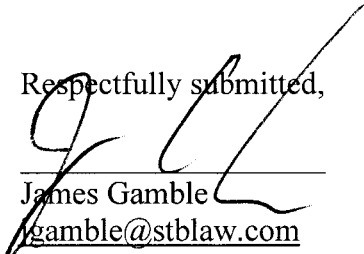
For the reasons set forth above, the Moving Defendants respectfully request that the actions listed in Schedule A be transferred to the Southern District of New York pursuant to 28 U.S.C. § 1407 for consolidated and coordinated pretrial proceedings.<sup>12</sup>

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<sup>12</sup> *See* Schedule A of Related Actions.

Dated: February 5, 2008

Respectfully submitted,

  
James Gamble  
[jgamble@stblaw.com](mailto:jgamble@stblaw.com)

**SIMPSON THACHER & BARTLETT LLP**

425 Lexington Avenue  
New York, New York 10017-3954  
(212) 455-2700  
(212) 455-2502 (fax)

*Counsel for Defendants Virgin Mobile USA,  
Daniel H. Schulman, Jonathan Marchbank,  
John D. Feehan, Jr., Frances Brandon-  
Farrow, Douglas B. Lynn, Mark Poole, Robert  
Samuelson, L. Kevin Cox, Thomas O. Ryder,  
and Kenneth T. Stevens*



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CERTIFICATE OF SERVICE

I, William van Opstal, hereby certify that on this day, February 5, 2008, true and correct copies of (1) the Reply Memorandum of Law in Support of Their Motion for Transfer of Related Securities Actions to the Southern District of New York; (2) the Compendium of Unreported Authorities Cited in the Reply Memorandum of Law; and (3) the attached Service List were served upon the parties listed on the attached service list via Federal Express.

  
William van Opstal

Dated: February 5, 2008

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United States District Court  
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United States District Court  
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United States District Court  
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United States District Court  
District of Kansas

Judge David R. Hansen  
United States Court of Appeals  
Eighth Circuit

Judge Anthony J. Scirica  
United States Court of Appeals  
Third Circuit

**DIRECT REPLY TO:**

Jeffery N. Lüthi  
Clerk of the Panel  
One Columbus Circle, NE  
Thurgood Marshall Federal  
Judiciary Building  
Room G-255, North Lobby  
Washington, D.C. 20002

Telephone: (202) 502-2800  
Fax: (202) 502-2888  
<http://www.jpml.uscourts.gov>

January 22, 2008

TO ALL INVOLVED COUNSEL

Re: MDL No. 1931 -- IN RE: Virgin Mobile Initial Public Offering (IPO) Securities Litigation

Panel Attorney Service List

Dear Counsel:

Pursuant to Rule 5.2(d) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 431 (2001), I am enclosing a copy of the Panel Attorney Service List in the above-referenced litigation. This list has been prepared on the basis of the appearances received. If you have any corrections or changes, please notify us immediately in writing and distribute copies of your notification to all counsel and/or parties appearing on the Panel Attorney Service List.

In the future, copies of opinions, order, notices, etc., distributed by this office will be sent only to attorneys appearing on this list. **Rule 5.2(a) requires that a copy of this list be attached to your proof of service for the distribution of future materials directed to the Panel and is to be supplemented in the proof of service in the event of the presence of additional parties or successor counsel.** If the Panel determines that Section 1407 transfer is appropriate in this litigation, a copy of this list will be directed to the designated transferee court for their reference.

Very truly,

Jeffery N. Lüthi  
Clerk of the Panel

By Dana R. Stewart  
Deputy Clerk

Enclosure

JPML Form 24

**Judicial Panel on Multidistrict Litigation - Panel Attorney Service List  
for  
MDL 1931 - IN RE: Virgin Mobile Initial Public Offering (IPO) Securities Litigation**

**\*\*\* Report Key and Title Page \*\*\***

Please Note: This report is in alphabetical order by the last name of the attorney. A party may not be represented by more than one attorney. See Panel rule 5.2(c).

**Party Representation Key**

- \* Signifies that an appearance was made on behalf of the party by the representing attorney.
  - # Specified party was dismissed in some, but not all, of the actions in which it was named as a party.
- All counsel and parties no longer active in this litigation have been suppressed.

**This Report is Based on the Following Data Filters**

Docket: 1931 - Virgin Mobile Initial Public Offering (IPO) Securities  
For Open Cases

**Judicial Panel on Multidistrict Litigation - Panel Attorney Service List**

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Docket: 1931 - IN RE: Virgin Mobile Initial Public Offering (IPO) Securities Litigation

Status: Pending on / /

Transferee District: Judge:

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**ATTORNEY - FIRM**

**REPRESENTED PARTY(S)**

Gamble, James  
SIMPSON THACHER & BARTLETT LLP  
425 Lexington Avenue  
New York, NY 10017-3954

=> Phone: (212) 455-2000 Fax: (212) 455-2502 Email: jgamble@stblaw.com  
Brandon-Farrow, Frances\*; Corvina Holdings Ltd.\*; Cox, L. Kevin\*; Feehan, Jr., John D.\*; Lynn,  
Douglas B.\*; Marchbank, Jonathan\*; Poole, Mark\*; Ryder, Thomas O.\*; Samuelson, Robert\*;  
Schulman, Daniel H.\*; Sprint Nextel Corp.\*; Stevens, Kenneth T.\*; Virgin Mobile USA, Inc.\*

Kaskela, D. Seamus  
SCHIFFRIN BARROWAY TOPAZ & KESSLER LLP  
280 King of Prussia Road  
Radnor, PA 19087

=> Phone: (610) 667-7706 Fax: (610) 667-7056 Email: skaskela@sbtldaw.com  
Joseph, Jr., Roger\*

Oufnac, Kevin L.  
KAHN GAUTHIER SWICK LLC  
650 Poydras Street  
Suite 2150  
New Orleans, LA 70130

=> Phone: (504) 455-1400 Fax: (504) 455-1498 Email: kevin.oufnac@kgsccounsel.com  
Volpe, Michael\*

Rudman, Samuel H.  
COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP  
58 South Service Road  
Suite 200  
Melville, NY 11747

=> Phone: (631) 367-7100 Fax: (631) 367-1173  
Brodsky, Ellen

Saltzstein, Susan L.  
SKADDEN ARPS SLATE MEAGHER & FLOM LLP  
4 Times Square  
New York, NY 10036-6522

=> Phone: (212) 735-3000 Fax: (212) 735-2000 Email: Susan.Saltzstein@skadden.com  
Bear, Stearns & Co., Inc.\*; Lehman Brothers, Inc.\*; Merrill Lynch & Co.\*; Merrill Lynch, Pierce,  
Fenner & Smith, Inc.\*; Raymond James & Associates, Inc.\*; Thomas Weisel Partners, L.L.C.\*

Speirs, Richard A.  
ZWERLING SCHACHTER & ZWERLING LLP  
41 Madison Avenue  
32nd Floor  
New York, NY 10010

=> Phone: (212) 223-3900 Fax: (212) 371-5969 Email: rspeirs@zsz.com  
2 West, Inc.

A

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ON MULTIDISTRICT LITIGATION

MDL Docket No. 1931

## Schedule A of Related Actions

<u>Caption</u>	<u>Dated Filed</u>	<u>Docket #</u>	<u>Judge</u>	<u>Causes of Action</u>	<u>District Court</u>
Ellen Brodsky, Individually and On Behalf of all Others Similarly Situated v. Virgin Mobile USA, Inc., Daniel H. Schulman, John D. Feehan, Jr., Lehman Brothers, Merrill Lynch & Co. and Bear, Stearns & Co., Inc.	11/26/2007	07cv10589	Judge Thomas Griesa	Sections 11, 12(a)(2), and 15 of the Securities Act of 1933	Southern District of New York
2 West, Inc., On Behalf of Itself and All Others Similarly Situated v. Virgin Mobile USA, Inc., Daniel H. Schulman, John D. Feehan, Jr., Lehman Brothers Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Bear, Stearns & Co. Inc.	12/28/2007	07cv11625	Referred to Judge Thomas Griesa	Sections 11, 12(a)(2), and 15 of the Securities Act of 1933	Southern District of New York
Michael Volpe, Individually And On Behalf of All Others Similarly Situated v. Daniel H. Schulman, Douglas B. Lynn, Jonathan Marchbank, Mark Poole, John D. Feehan, Frances Brandon-Farrow, Robert Samuelson, L. Kevin Cox,	11/21/2007	07cv05619	Judge Sandra Wigenton	Sections 11 and 15 of Securities Act of 1933	District of New Jersey

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<u><b>Caption</b></u>	<u><b>Dated Filed</b></u>	<u><b>Docket #</b></u>	<u><b>Judge</b></u>	<u><b>Causes of Action</b></u>	<u><b>District Court</b></u>
Thomas O. Ryder, Kenneth T. Stevens, Sprint Nextel Corp., Corvina Holdings Limited, Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., Bear, Stearns & Co., Inc., Raymond James & Assoc., Inc., Thomas Weisel Partners, LLC and Virgin Mobile USA, Inc.					

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE VIRGIN MOBILE USA IPO  
LITIGATION

Lead Case No. 07-cv-05619-SDW-  
MCA

(Securities Class Action)

This Document Relates To:

ALL ACTIONS.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY  
PROCEEDINGS PENDING RULING ON TRANSFER AND  
CONSOLIDATION BY THE JUDICIAL PANEL ON MULTIDISTRICT  
LITIGATION**

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Motion Day: February 19, 2008

DRINKER BIDDLE & REATH LLP  
500 Campus Drive  
Florham Park, New Jersey 07932-1047  
(973) 360-1100

SILLS CUMMIS & GROSS P.C.  
The Legal Center  
One Riverfront Plaza  
Newark, New Jersey 07102  
(973) 643-7000

SIMPSON THACHER & BARTLETT LLP  
425 Lexington Avenue  
New York, New York 10017-3954  
(212) 455-2700

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000

*Counsel for Defendants Virgin Mobile USA,  
Daniel H. Schulman, Jonathan Marchbank,  
John D. Feehan, Jr., Frances Brandon-  
Farrow, Douglas B. Lynn, Mark Poole, Robert  
Samuelson, L. Kevin Cox, Thomas O. Ryder,  
Kenneth T. Stevens, Sprint Nextel Corp., and  
Corvina Holdings Limited*

*Counsel for Defendants Lehman  
Brothers, Inc., Merrill Lynch Pierce  
Fenner & Smith, Inc., Bear, Stearns &  
Co., Inc., Raymond James & Assoc.,  
Inc., and Thomas Weisel Partners, LLC*

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Defendants Virgin Mobile USA, Inc., Daniel H. Schulman, Jonathan Marchbank, John D. Feehan, Jr., Frances Brandon-Farrow, Douglas B. Lynn, Mark Poole, Robert Samuelson, L. Kevin Cox, Thomas O. Ryder, Kenneth T. Stevens, Sprint Nextel Corp., Corvina Holdings Limited, Lehman Brothers, Merrill Lynch, Pierce, Fenner & Smith, Inc., Bear, Stearns & Co., Inc., Raymond James & Associates, Inc. and Thomas Weisel Partners, LLC (the "Defendants"), respectfully request that this Court stay this litigation until after the Judicial Panel On Multidistrict Litigation issues a decision on the motion filed in connection with this case to transfer all related securities actions to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1407.

### **INTRODUCTION**

To date, four securities class actions have been filed alleging that the Prospectus and Registration Statement associated with the Virgin Mobile October 2007 IPO contained materially false and misleading statements in violation of the Securities Act of 1933. Three of the actions were filed in the Southern District of New York (the "New York Cases")<sup>1</sup> and one was filed in the District of New

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<sup>1</sup> See Exhib. 1, *Brodsky v. Virgin Mobile USA, Inc., et al.*, 07-cv-10589 (S.D.N.Y. Nov. 26, 2007) ("Brodsky Compl."); Exhib. 2, *Joseph v. Virgin Mobile USA, Inc., et al.*, 07-cv-11060 (S.D.N.Y. Dec. 6, 2007) ("Joseph Compl."); Exhib. 3, *2 West, Inc. v. Virgin Mobile USA, Inc., et al.*, 07-cv-11625 (S.D.N.Y. Dec. 28, 2007) ("2 West Compl.").

Jersey (the “New Jersey Case”).<sup>2</sup> The parties to the New York Cases have signed stipulations consolidating these actions for pre-trial purposes. The stipulation in the Brodsky and Joseph actions was so ordered by the Honorable Thomas P. Griesa on December 20, 2007.<sup>3</sup> The parties to the New Jersey Case have entered into a similar stipulation, which was approved by this Court on December 17, 2007. However, the plaintiff in the New Jersey Case has stated that he will not agree to transfer the New Jersey Case to the Southern District of New York to be consolidated with the New York Cases.

On January 7, 2008, the Defendants filed a motion with the Judicial Panel on Multidistrict Litigation (the “Panel”) to transfer the New Jersey Case to the Southern District of New York for coordinated or consolidated pre-trial proceedings (the “Transfer Motion”).<sup>4</sup> Although the Defendants believe that plaintiffs’ allegations are without merit, if these actions are to proceed, transfer of these actions to one district for coordinated pretrial proceedings is appropriate. To our knowledge, all of the parties to these actions agree that transfer and

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<sup>2</sup> *Volpe v. Schulman, et al.*, 07-cv-05619 (D.N.J. Nov. 11, 2007).

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coordination of these actions in a single district is appropriate. The sole disagreement centers on the selection of the transferee district.

This Court should stay further pretrial proceedings in the New Jersey Case pending resolution of the Transfer Motion for three reasons. First, a stay would promote judicial economy by avoiding duplicative and wasteful judicial efforts. In the likely event that the MDL panel grants the Transfer Motion, any work done by this Court on setting a discovery schedule, resolving discovery disputes, and engaging in other pretrial matters either will need to be redone by this Court to account for the new cases or, if the instant case is transferred to a different district, will need to be redone by the new transferee court. Second, a stay would prevent the risk of inconsistent or conflicting rulings such as on the appointment of a lead plaintiff. Finally, plaintiff will not suffer any prejudice from such a short stay of this action.

### **ARGUMENT**

Pursuant to the Federal Rules of Civil Procedure, a court may “make any order which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or undue burden or expense” for “good cause.” Fed. R. Civ. P. 26(c). A court’s power to stay proceedings is “incidental to the power inherent in every court to control the disposition of the causes [sic] on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis*

*N. Am. Co.*, 299 U.S. 248, 254 (1936). Granting a stay of an action pending a motion to consolidate is “committed to the Court’s discretion.” *Hertz Corp. v. Gator Corp.*, 250 F. Supp. 2d 421, 426 (D.N.J. 2003) (staying action pending decision by the MDL Panel); *see also Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997).

Courts consider three factors when deciding whether proceedings should be stayed: (1) whether a stay will promote judicial economy by avoiding duplicative efforts; (2) whether the moving party will experience hardship and inequity if the action is not stayed; and (3) whether the non-moving party will suffer any prejudice if the proceedings are stayed. *Rivers*, 980 F. Supp. at 1360; *Mathis v. Bristol-Meyers Squibb, Co.*, No. 03-0308 (GTP), 2003 U.S. Dist. LEXIS 3797, at \*2 (E.D. La. Mar. 12, 2003). Here, each factor weighs in favor of staying this action pending resolution of the Transfer Motion.

**I. Staying These Proceedings Will Promote Judicial Economy**

A stay should be granted in this action to avoid wasting judicial resources. “[A] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.” *Rivers*, 980 F. Supp. at 1362; *see also Falgoust v. Microsoft Corp.*, No. 00-0779 (AJM), 2000 U.S. Dist. LEXIS 5417, at \*8 (E.D. La. Apr. 19, 2000) (“[T]he



interests of judicial economy would best be served by granting a stay” pending the MDL Panel’s determination on consolidation.); *Aikins v. Microsoft Corp.*, No. 00-0242 (AJM), 2000 U.S. Dist. LEXIS 4371, at \*5 (E.D. La. Mar. 24, 2000) (same); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998); *Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 92-1030, 92-1086 (HJH), 1992 U.S. Dist. LEXIS 7374, at \*5-6 (E.D. Pa. May 7, 1992); *Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989, 990 (E.D. Wis. 2000); *Portnoy v. Zenith Labs., Inc.*, No. 86-3512 (AMW), 1997 U.S. Dist. LEXIS 16134, at \*2 (D.D.C. Apr. 21, 1987); *Hertz*, 250 F. Supp. 2d at 428 (“Given the short time until the MDL Panel will consider the motion, this Court’s immediate and substantial investment of time is a waste of judicial resources”); *Nekritz v. Canary Capital Partners, LLC*, Civ. No. 03-5081 (DRD), 2004 U.S. Dist. LEXIS 12473, at \*14 (D.N.J. Jan. 12, 2004) (finding that interests of judicial economy were best served by a stay pending MDL Panel decision on transfer motion, with little or no disadvantage to plaintiff).

As the *Rivers* court explained:

First, . . . this Court will have needlessly expended its energies familiarizing itself with the intricacies of a case that would be heard by another judge. And second, any efforts on behalf of this Court concerning case management will most likely have to be replicated by the judge that is assigned to handle the consolidated litigation . . . .

In addition, even if this Court denied [the] motion to stay, [and] ruled upon more substantive motions, . . . there are no guarantees that an order by this Court would not later be vacated and this Court’s investment of time and resources would not have been in vain.

*Rivers*, 980 F. Supp. at 1360-61.

Such is the case here. Given that all four of these cases involve the same facts (alleged statements or omissions in the Virgin Mobile Prospectus and Registration Statement), allege violations of the Securities Act of 1933, and name the same core defendants (the issuer of the IPO, the issuer's officers and directors, and the lead underwriters of the IPO), it is very likely that the MDL panel will grant the Transfer Motion. In that event, any work done by this Court on setting discovery schedule, resolving discovery disputes, and engaging in other pretrial matters will either need to be redone by this Court to account for the new cases or, if the instant case is transferred to a different district, will need to be redone by the new transferee court. To conserve judicial resources and avoid duplicative pretrial proceedings, this Court should stay proceedings in the New Jersey Case until the MDL Panel decides where these cases properly belong. *See Mathis*, 2003 U.S. Dist. LEXIS at \*3 ("A temporary stay is appropriate in this case because it is inevitable that this case will be transferred to [the] MDL [proceedings].").

A stay is also warranted in this action because it will help to prevent potentially conflicting decisions by different courts—one of the main purposes of 28 U.S.C. § 1407. *See In re Multidist. Private Civil Treble Damage Litig. Involving Plumbing Fixtures*, 298 F. Supp. 484, 490-93 (J.P.M.L. 1968) (explaining that the remedial aim of the statute is "to eliminate the potential for

conflicting contemporaneous pretrial rulings” by courts in cases appropriate for consolidation). Courts regularly stay pretrial proceedings to avoid potentially inconsistent rulings on pretrial matters. For example, in *Rivers*, the court found that in addition to the risk of wasted judicial resources, the potential for conflicting decisions weighed in favor of a stay. 980 F. Supp. at 1360-61; *see also Good*, 5 F. Supp. 2d at 809 (staying proceedings pending consolidation decision because “[t]he purpose of such transfers is . . . to eliminate the potential for conflicting pretrial rulings”); *Am. Seafood, Inc.*, 1992 U.S. Dist. LEXIS 7374 at \*6 (“[J]udicial economy and prejudice to the defendants weigh heavily in favor of [a] stay” when conflicting rulings are possible.); *D’s Pet Supplies, Inc. v. Microsoft Corp.*, No. 99-76056 (GER), et al., 2000 U.S. Dist. LEXIS 16482, at \*3 (E.D. Mich. Feb. 7, 2000); *Aetna U.S. Healthcare, Inc. v. Hoechst Aktiengesellschaft*, 48 F. Supp. 2d 36, 43 (D.D.C. 1999).

The need to avoid conflicting judicial decisions is particularly apparent here. This case is a putative securities class action and is subject to the requirements of the Private Securities Litigation Reform Act (“PSLRA”). *See* 15 U.S.C. § 78u-4(a)(1) (“The provisions of this subsection shall apply in each private action arising under this chapter that is brought as a plaintiff class action. . . .”). As a result, prior to proceeding motions for the appointment of a lead plaintiff must be filed and the court must select a lead plaintiff. *See* 15 U.S.C. § 78u-

4(a)(3)(B)(i-ii). All of the cases that the Defendants seek to consolidate, including the ones before this Court, are based on essentially identical allegations. Further, the applicable principles for determining the appropriate lead plaintiff are prescribed by the PSLRA and will be the same in each of the cases. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii). As such, while the statute requires that any lead plaintiff motions made by interested shareholders in any of these cases be filed within the prescribed [90-day] period, the decision on any such motions should be stayed until after the transferee Court has been selected to ensure consistent application of the PSLRA and efficient resolution of these securities actions. *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii) (“If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered.”); *see also Sevel v. AOL Time Warner, Inc.*, 232 F. Supp. 2d 615, 617 (E.D. Va. 2002) (granting motion to stay pending MDL decision). As the *Sevel* court explained:

From the [PSLRA] statute, the Court finds it evident that it must not determine a lead plaintiff or approve the choice of lead counsel until after the decision on the motion to consolidate before the MDL has been rendered.

*Id.*

A stay, therefore, would conserve judicial resources by allowing one judge to rule on similar arguments, and would eliminate the possibility of conflicting decisions by different courts. Thus, economy, efficiency, and uniformity of decision strongly favor staying proceedings in this matter pending the MDL Panel's decision on the Transfer Motion.

## **II. Staying These Proceedings Will Not Prejudice Plaintiffs**

The plaintiffs will suffer no prejudice by what is likely to be a short stay. The next available hearing before the MDL Panel is in March 2008 and the Panel typically issues decisions on a rolling basis starting two to three weeks after the hearing. *See, e.g., Hertz*, 250 F. Supp. 2d at 428 (“Barring unusual circumstances, the MDL Panel will decide the motion in a relatively short period of time”). Thus, the Transfer Motion likely will be decided just a few months from now. This short duration of time weighs in favor of granting the stay. *See Good*, 5 F. Supp. 2d at 809 (granting stay where “stay pending a final decision by the MDL Panel would likely be brief”); *Tench v. Jackson Nat’l Life Ins. Co.*, No. 99 C 5182 (EEB), 1999 U.S. Dist. LEXIS 18023, at \*2 (N.D. Ill. Nov. 10, 1999) (granting a stay as plaintiff would suffer no prejudice from the short delay).

Moreover, courts have generally concluded that the long-run benefits of a stay outweigh any minimal short-run costs to the plaintiff. *See Hertz*, 250 F. Supp. 2d at 428 (granting a stay despite potential harm to plaintiff because

“[w]ithout a short stay, the Court loses the potential efficiencies that would be created by having pretrial issues involving common facts and law decided by a single judge”); *Egon v. Del-Val Financial Corp.*, No. Civ. 90-4338 (AMW), 1991 U.S. Dist. LEXIS 1420, at \*2-3 (D.N.J. Feb. 4, 1991) (“[E]ven if a temporary stay can be characterized as a delay prejudicial to plaintiffs, there are considerations of judicial economy and hardship to defendants that are compelling enough to warrant such a delay.”); *Rosenfeld v. Hartford Fire Ins. Co.*, Nos. 88 Civ. 2153, 88 Civ. 2252 (MJL), 1988 U.S. Dist. LEXIS 4068, at \*4 (S.D.N.Y. May 12, 1988) (“While [plaintiffs] may suffer some initial delay, once the cases are coordinated and the defendants are able to respond to all the complaints in a coordinated manner, more time may well be saved than was lost.”); *Dumont v. Charles Schwab & Co.*, Nos. 99-2840, et al. (CS), 2000 U.S. Dist. LEXIS 619, at \*9 (E.D. La. Jan. 20, 2000); *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 90-4378 (AMW), 1991 U.S. Dist. LEXIS 1431, at \*4-6 (D.N.J. Feb. 1, 1991).

### **CONCLUSION**

For the forgoing reasons, Defendants respectfully request that the Court stay all proceedings in the New Jersey Case, other than accepting for filing any motions for the appointment of lead plaintiff, pending the resolution of the Transfer Motion.

Dated: January 22, 2008

Respectfully submitted,

/s/ James Altieri

James Altieri

James.Altieri@dbr.com

**DRINKER BIDDLE & REATH LLP**

A Delaware Limited Liability

Partnership

500 Campus Drive

Florham Park, New Jersey 07932-1040

(973) 360-1100

(973) 360-9831 (facsimile)

*Counsel for Defendants Virgin Mobile  
USA, Inc., Daniel H. Schulman,  
Jonathan Marchbank, John D. Feehan,  
Jr., Frances Brandon-Farrow, Douglas  
B. Lynn, Mark Poole, Robert  
Samuelson, L. Kevin Cox, Thomas O.  
Ryder, Kenneth T. Stevens,  
Sprint Nextel Corp. and Corvina  
Holdings Limited*

James Gamble

jgamble@stblaw.com

**SIMPSON THACHER &**

**BARTLETT LLP**

425 Lexington Avenue

New York, New York 10017-3954

(212) 455-2700

(212) 455-2502 (facsimile)

*Counsel for Defendants Virgin Mobile  
USA, Daniel H. Schulman, Jonathan  
Marchbank, John D. Feehan, Jr.,  
Frances Brandon-Farrow, Douglas B.  
Lynn, Mark Poole, Robert Samuelson,  
L. Kevin Cox, Thomas O. Ryder,  
Kenneth T. Stevens, Sprint Nextel Corp.,  
and Corvina Holdings Limited*

Dated: January 22, 2008

/s/ Jeffrey J. Greenbaum  
Jeffrey J. Greenbaum  
jgreenbaum@sillscummis.com

SILLS CUMMIS & GROSS P.C.  
The Legal Center  
One Riverfront Plaza  
Newark, New Jersey 07102  
(973) 643-7000  
*Counsel for Defendants Lehman  
Brothers, Inc., Merrill Lynch Pierce  
Fenner & Smith, Inc., Bear, Stearns &  
Co., Inc., Raymond James & Assoc.,  
Inc., and Thomas Weisel Partners, LLC*

Susan L. Saltzstein  
Susan.Saltzstein@skadden.com  
**SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP**  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000  
*Counsel for Defendants Lehman  
Brothers, Inc., Merrill Lynch Pierce  
Fenner & Smith, Inc., Bear, Stearns &  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**IN RE VIRGIN MOBILE USA IPO  
LITIGATION**

Lead Case No. 07-CV-10589 (TPG)

(Securities Class Action)

This Document Relates To:

**ALL ACTIONS.**

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY PROCEEDINGS  
PENDING RULING ON TRANSFER AND CONSOLIDATION BY THE JUDICIAL  
PANEL ON MULTIDISTRICT LITIGATION**

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**SIMPSON THACHER & BARTLETT LLP**  
425 Lexington Avenue  
New York, New York 10017-3954  
(212) 455-2700

*Counsel for Defendants Virgin Mobile USA,  
Daniel H. Schulman, Jonathan Marchbank,  
John D. Feehan, Jr., Frances Brandon-  
Farrow, Douglas B. Lynn, Mark Poole, Robert  
Samuelson, L. Kevin Cox, Thomas O. Ryder,  
and Kenneth T. Stevens*

**SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP**  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000

*Counsel for Defendants Lehman  
Brothers, Merrill Lynch & Co., Merrill  
Lynch, Pierce, Fenner & Smith  
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### INTRODUCTION

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#### **ARGUMENT**

Pursuant to the Federal Rules of Civil Procedure, a court may "make any . . . which justice requires to protect a party . . . from annoyance, embarrassment, oppression, or

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Courts consider three factors when deciding whether proceedings should be stayed: (1) whether a stay will promote judicial economy by avoiding duplicative efforts; (2) whether the moving party will experience hardship and inequity if the action is not stayed; and (3) whether the non-moving party will suffer any prejudice if the proceedings are stayed. *Rivers*, 980 F. Supp. at 1360; *Mathis v. Bristol-Meyers Squibb, Co.*, No. 03-0308 (GTP), 2003 U.S. Dist. LEXIS 3797, at \*2 (E.D. La. Mar. 12, 2003). Here, each factor weighs in favor of staying this action pending resolution of the Transfer Motion.

#### **I. Staying These Proceedings Will Promote Judicial Economy**

A stay should be granted in this action to avoid wasting judicial resources. “[A] majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.” *Rivers*, 980 F. Supp. at 1362; *see also Falgoust v. Microsoft Corp.*, No. 00-0779 (AJM), 2000 U.S. Dist. LEXIS 5417, at \*8 (E.D. La. Apr. 19, 2000) (“[T]he interests of judicial economy would best be served by granting a stay” pending the MDL Panel’s determination on consolidation.); *Aikins v. Microsoft Corp.*, No. 00-0242 (AJM), 2000 U.S. Dist. LEXIS 4371, at \*5 (E.D. La. Mar. 24, 2000) (same); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998); *Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 92-1030, 92-1086 (HJH), 1992 U.S. Dist. LEXIS 7374, at \*5-6 (E.D. Pa. May 7, 1992).



*Weinke v. Microsoft Corp.*, 84 F. Supp. 2d 989, 990 (E.D. Wis. 2000); *Portnoy v. Zenith Labs., Inc.*, No. 86-3512 (AMW), 1997 U.S. Dist. LEXIS 16134, at \*2 (D.D.C. Apr. 21, 1987); *Hertz*, 250 F. Supp. 2d at 428 ("Given the short time until the MDL Panel will consider the motion, this Court's immediate and substantial investment of time is a waste of judicial resources"); *Nekritz v. Canary Capital Partners, LLC*, Civ. A. No. 03-5081 (DRD), 2004 U.S. Dist. LEXIS 12473, at \*14 (D.N.J. Jan. 12, 2004) (finding that interests of judicial economy were best served by a stay pending MDL Panel decision on transfer motion, with little or no disadvantage to plaintiff). As the *Rivers* court explained:

First, . . . this Court will have needlessly expended its energies familiarizing itself with the intricacies of a case that would be heard by another judge. And second, any efforts on behalf of this Court concerning case management will most likely have to be replicated by the judge that is assigned to handle the consolidated litigation . . . .

In addition, even if this Court denied [the] motion to stay, [and] ruled upon more substantive motions, . . . there are no guarantees that an order by this Court would not later be vacated and this Court's investment of time and resources would not have been in vain.

*Rivers*, 980 F. Supp. at 1360-61.

Such is the case here. Given that all four of these cases involve the same facts (alleged statements or omissions in the Virgin Mobile Prospectus and Registration Statement), allege violations of the Securities Act of 1933, and name the same core defendants (the issuer of the IPO, the issuer's officers and directors, and the lead underwriters of the IPO), it is very likely that the MDL panel will grant the Transfer Motion. In that event, any work done by this Court on setting a discovery schedule, resolving discovery disputes, and engaging in other pretrial matters will either need to be redone by this Court to account for the new case or, if the cases are transferred to a different district, will need to be redone by the new transferee court. To conserve judicial resources and avoid duplicative pretrial proceedings, this Court should stay proceedings in the New York Cases until the MDL Panel decides where these cases properly belong. *See*

*Mathis*, 2003 U.S. Dist. LEXIS at \*3 (“A temporary stay is appropriate in this case because it is inevitable that this case will be transferred to [the] MDL [proceedings].”).

A stay is also warranted in this action because it will help to prevent potentially conflicting decisions by different courts—one of the main purposes of 28 U.S.C. § 1407. *See In re Multidist. Private Civil Treble Damage Litig. Involving Plumbing Fixtures*, 298 F. Supp. 484, 490-93 (J.P.M.L. 1968) (explaining that the remedial aim of the statute is “to eliminate the potential for conflicting contemporaneous pretrial rulings” by courts in cases appropriate for consolidation). Courts regularly stay pretrial proceedings to avoid potentially inconsistent rulings on pretrial matters. For example, in *Rivers*, the court found that in addition to the risk of wasted judicial resources, the potential for conflicting decisions weighed in favor of a stay. 980 F. Supp. at 1360-61; *see also Good*, 5 F. Supp. 2d at 809 (staying proceedings pending consolidation decision because “[t]he purpose of such transfers is . . . to eliminate the potential for conflicting pretrial rulings”); *Am. Seafood, Inc.*, 1992 U.S. Dist. LEXIS 7374 at \*6 (“[J]udicial economy and prejudice to the defendants weigh heavily in favor of [a] stay” when conflicting rulings are possible.); *D’s Pet Supplies, Inc. v. Microsoft Corp.*, Nos. 99-76056, et al. (GER), 2000 U.S. Dist. LEXIS 16482, at \*3 (E.D. Mich. Feb. 7, 2000); *Aetna U.S. Healthcare, Inc. v. Hoechst Aktiengesellschaft*, 48 F. Supp. 2d 36, 43 (D.D.C. 1999).

The need to avoid conflicting judicial decisions is particularly apparent here. This case is a putative securities class action and is subject to the requirements of the Private Securities Litigation Reform Act (“PSLRA”). *See* 15 U.S.C. § 78u-4(a)(1) (“The provisions of this subsection shall apply in each private action arising under this chapter that is brought as a plaintiff class action. . . .”). As a result, prior to proceeding a lead plaintiff must be selected. *See* 15 U.S.C. § 78u-4(a)(3)(B)(i-ii). All of the cases that the Defendants seek to consolidate, including the ones before this Court, are based on essentially identical allegations. Further, the applicable principles for determining the appropriate lead plaintiff are prescribed by the PSLRA.

and will be the same in each of the cases. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii). As such, the transferee Court should consider any lead plaintiff motions made by interested shareholders in any of these cases to ensure consistent application of the PSLRA and efficient resolution of these securities actions. *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii) ("If more than one action on behalf of a class asserting substantially the same claim or claims arising under this title has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered."); *see also Sevel v. AOL Time Warner, Inc.*, 232 F. Supp. 2d 615, 617 (E.D. Va. 2002) (granting motion to stay pending MDL decision). As the *Sevel* court explained:

From the [PSLRA] statute, the Court finds it evident that it must not determine a lead plaintiff or approve the choice of lead counsel until after the decision on the motion to consolidate before the MDL has been rendered.

*Id.*

A stay therefore, would conserve judicial resources by allowing one judge to rule on similar arguments, and would eliminate the possibility of conflicting decisions by different courts. Thus, economy, efficiency, and uniformity of decision strongly favor staying proceedings in this matter pending the MDL Panel's decision on the Transfer Motion.

## **II. Staying These Proceedings Will Not Prejudice Plaintiffs**

The plaintiffs will suffer no prejudice by what is likely to be a short stay. The next available hearing before the MDL Panel is in March 2008 and the Panel typically issues decisions on a rolling basis starting two to three weeks after the hearing. *See, e.g., Hertz*, 250 F. Supp. 2d at 428 ("Barring unusual circumstances, the MDL Panel will decide the motion in a relatively short period of time"). Thus, the Transfer Motion likely will be decided just a few months from now. This short duration of time weighs in favor of granting the stay. *See Good*, 5 F. Supp. 2d at 809 (granting stay where "stay pending a final decision by the MDL Panel would likely be brief"); *Tench v. Jackson Nat'l Life Ins. Co.*, No. 99 C 5182 (EEB), 1999 U.S. Dist.

LEXIS 18023, at \*2 (N.D. Ill. Nov. 10, 1999) (granting a stay as plaintiff would suffer prejudice from the short delay).

Moreover, courts have generally concluded that the long-run benefits of a stay outweigh any minimal short-run costs to the plaintiff. *See Hertz*, 250 F. Supp. 2d at 428 (granting a stay despite potential harm to plaintiff because “[w]ithout a short stay, the Court loses the potential efficiencies that would be created by having pretrial issues involving common facts and law decided by a single judge”); *Egon v. Del-Val Financial Corp.*, No. Civ. 90-4338 (AMW), 1991 U.S. Dist. LEXIS 1420, at \*2-3 (D.N.J. Feb. 4, 1991) (“[E]ven if a temporary stay can be characterized as a delay prejudicial to plaintiffs, there are considerations of judicial economy and hardship to defendants that are compelling enough to warrant such a delay.”); *Rosenfeld v. Hartford Fire Ins. Co.*, Nos. 88 Civ. 2153 (MJL), 88 Civ. 2252, 1988 U.S. Dist. LEXIS 4068, at \*4 (S.D.N.Y. May 12, 1988) (“While [plaintiffs] may suffer some initial delay once the cases are coordinated and the defendants are able to respond to all the complaints in a coordinated manner, more time may well be saved than was lost.”); *Dumont v. Charles Schwab & Co.*, Nos. 99-2840, et al. (CS), 2000 U.S. Dist. LEXIS 619, at \*9 (E.D. La. Jan. 20, 2000); *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No. 90-4378 (AMW), 1991 U.S. Dist. LEXIS 1431, at \*4-6 (D.N.J. Feb. 1, 1991).

### CONCLUSION

For the forgoing reasons, Moving Defendants respectfully request that the Court stay all proceedings in the New York Cases, other than accepting for filing any motions for the appointment of lead plaintiff, pending the resolution of the Transfer Motion.

Dated: January 22, 2008

Respectfully submitted,

/s/ James Gamble  
James Gamble  
[jgamble@stblaw.com](mailto:jgamble@stblaw.com)

**SIMPSON THACHER & BARTLETT LLP**  
425 Lexington Avenue  
New York, New York 10017-3954  
(212) 455-2700  
(212) 455-2502 (fax)  
*Counsel for Defendants Virgin Mobile USA,  
Daniel H. Schulman, Jonathan Marchbank,  
John D. Feehan, Jr., Frances Brandon-  
Farrow, Douglas B. Lynn, Mark Poole, Robert  
Samuelson, L. Kevin Cox, Thomas O. Ryder,  
and Kenneth T. Stevens*

Dated: January 22, 2008

/s/ Susan L. Saltzstein  
Susan L. Saltzstein  
[Susan.Saltzstein@skadden.com](mailto:Susan.Saltzstein@skadden.com)

**SKADDEN, ARPS, SLATE, MEAGHER &  
FLOM LLP**  
Four Times Square  
New York, New York 10036-6522  
(212) 735-3000  
*Counsel for Defendants Lehman Brothers,  
Merrill Lynch & Co., Merrill Lynch, Pierce,  
Fenner & Smith Incorporated, Bear, Stearns &  
Co., Inc., Raymond James & Assoc., Inc., and  
Thomas Weisel Partners, LLC*



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROGER JOSEPH, JR., Individually and On Behalf  
of All Others Similarly Situated,

Plaintiff,

vs.

VIRGIN MOBILE USA, INC., DANIEL H. W.  
SCHULMAN, JONATHAN MARCHBANK,  
JOHN D. FEEHAN, JR., FRANCES BRANDON-  
FARROW, DOUGLAS B. LYNN, MARK POOLE,  
ROBERT SAMUELSON, L. KEVIN COX,  
THOMAS O. RYDER, KENNETH T. STEVENS,  
LEHMAN BROTHERS, MERRILL LYNCH &  
CO., BEAR, STEARNS & CO., INC., RAYMOND  
JAMES & ASSOC., INC., and THOMAS WEISEL  
PARTNERS, LLC,

Defendants.

NO. 07cv11060

NOTICE OF VOLUNTARY  
WITHDRAW

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 41, Plaintiff Roger Joseph, Jr.

hereby voluntarily dismissed the above-captioned action without prejudice.

Dated: January 30, 2008

**BRODSKY & SMITH, LLC**

By: Evan J. Smith, Esquire  
Evan J. Smith, Esquire  
240 Mineola Boulevard  
Mineola, NY 11501  
(516) 741-4977  
(516) 741-0626 (fax)

**SCHIFFRIN BARROWAY  
TOPAZ & KESSLER, LLP**

Richard A. Maniskas

D. Seamus Kaskela

280 King of Prussia Rd.

Radnor, PA 19087

(610) 667-7706

(610) 667-7056 (fax)

*Attorneys for Plaintiff Roger Joseph, Jr.*



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copy of the foregoing document was filed with the Clerk of Court by using CM/ECF, which will electronically transmit and notify all counsel of record on this the 30th day of January 2008. I also certify that the foregoing document is being served this day on all counsel of record identified via transmission of Notices of Electronic Filing generated by CM/ECF, and by electronic mail to counsel identified below.

Dated: January 30, 2008

By: Evan J. Smith, Esquire

Evan J. Smith, Esquire

**James Gaal Gamble**

Simpson Thacher & Bartlett LLP (NY)  
425 Lexington Avenue  
New York, NY 10017  
2124552000  
2124552502 (fax)  
jgamble@stblaw.com

**Susan Leslie Saltzstein**

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square(NYC)  
New York, NY 10036  
(212) 735-4132  
(917)-777-4132 (fax)  
ssaltzst@skadden.com



# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
NEW YORK SOUTHERN				2006	2005	2004	2003	2002	2001	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			12,201	12,945	12,422	12,321	13,937	12,783	U.S.	Circuit
	Terminations			11,339	11,346	11,471	10,780	12,618	11,247		
	Pending			20,047	19,302	17,638	17,275	16,198	15,818		
	% Change in Total Filings	Over Last Year		-5.8						56	5
		Over Earlier Years				-1.8	-1.0	-12.5	-4.6	59	2
Number of Judgeships				28	28	28	28	28	28		
Vacant Judgeship Months**				2.0	6.3	8.8	33.3	15.8	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	435	462	444	441	498	457	43	3	
		Civil	385	409	388	381	441	420	21	3	
		Criminal Felony	34	40	44	47	48	37	87	6	
		Supervised Release Hearings**	16	13	12	13	9	-	64	5	
	Pending Cases			716	689	630	617	579	565	8	2
	Weighted Filings**			501	551	527	513	539	560	28	3
	Terminations			405	405	410	385	451	402	55	3
	Trials Completed			13	15	16	17	15	15	71	3
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	16.7	14.5	11.9	11.8	13.3	12.3	93	6	
		Civil**	8.3	8.8	8.1	8.4	8.3	7.2	23	1	
	From Filing to Trial** (Civil Only)		25.7	22.0	26.8	22.6	23.0	24.4	48	1	
OTHER	Civil Cases Over 3 Years Old**	Number	3,107	2,652	1,656	1,312	1,230	1,585			
		Percentage	18.4	16.7	11.6	9.2	9.2	12.1	89	6	
	Average Number of Felony Defendants Filed Per Case			1.7	1.9	1.7	1.5	1.5	1.6		
	Jurors	Avg. Present for Jury Selection	96.33	99.86	88.01	82.96	83.28	73.12			
		Percent Not Selected or Challenged	60.4	62.0	53.1	54.8	61.9	53.2			

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	10793	230	767	1147	88	38	945	2257	1622	835	1374	66	1424
Criminal*	943	5	269	170	111	225	29	28	11	24	24	9	38

\* Filings in the "Overall Caseload Statistics" section include criminal transfers; while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."

# U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
NEW JERSEY				2006	2005	2004	2003	2002	2001	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			7,275	7,539	7,567	7,270	7,555	6,972	U.S.	Circuit
	Terminations			7,480	7,605	7,373	6,998	7,125	7,057		
	Pending			6,855	6,987	6,986	6,765	6,538	6,101		
	% Change in Total Filings	Over Last Year		-3.5						43	3
		Over Earlier Years			-3.9	.1	-3.7	4.3	45	4	
Number of Judgeships				17	17	17	17	17	17		
Vacant Judgeship Months**				32.3	27.8	12.0	11.0	47.8	7.5		
ACTIONS PER JUDGESHIP	FILINGS	Total	428	444	446	428	445	410	46	3	
		Civil	369	387	390	370	387	369	29	3	
		Criminal Felony	51	48	46	48	49	41	70	3	
		Supervised Release Hearings**	8	9	10	10	9	-	85	3	
	Pending Cases			403	411	411	398	385	359	38	4
	Weighted Filings**			481	493	500	486	482	463	33	2
	Terminations			440	447	434	412	419	415	48	3
	Trials Completed			11	10	10	10	12	11	86	6
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	12.1	10.0	9.8	9.0	9.4	8.0	81	5	
		Civil**	8.2	7.3	7.6	7.9	8.4	7.5	21	3	
	From Filing to Trial** (Civil Only)			33.0	36.7	33.4	33.8	30.0	33.0	68	4
OTHER	Civil Cases Over 3 Years Old**	Number	306	346	252	236	231	179			
		Percentage	5.2	5.7	4.2	4.0	4.0	3.3	41	3	
	Average Number of Felony Defendants Filed Per Case			1.2	1.3	1.2	1.2	1.2	1.2		
	Jurors	Avg. Present for Jury Selection	88.98	75.41	40.79	51.72	41.77	51.55			
		Percent Not Selected or Challenged	39.2	38.3	24.1	40.3	37.7	38.9			

2006 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	6274	240	343	904	82	26	845	1031	721	377	869	39	797
Criminal*	862	3	268	48	124	176	53	39	19	22	27	28	55

\* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

\*\* See "Explanation of Selected Terms."



UNITED STATES DISTRICT COURTHOUSE  
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET  
( Ordered by DOCUMENT No. )

M21-83

Date	Document #	Proceeding	By
04/17/2000	1	DOCKET NO. 1336. IN RE ABERCROMBIE & FITCH CO. SECURITIES LITIGATION: Before J.F. Nangle, Chairman Wllm. B. Enright, Clarence A. Brimmer, John F. Grady, Barefoot Sanders, Louis C. Bechtle and JOHN F. KEENAN, Judges of the Panel... Fld true certified copy of Transfer Order - This litigation presently consists of twenty actions in the following federal districts: fifteen actions in the S.D. of Ohio and five actions in the SDNY...IT IS THEREFORE ORDERED that, purs., to 28 USC 1407, the actions listed on the attached Sch. A pending outside the SDNY be, and the same hereby are, transferred to the SDNY and, w/the constant of that court, assigned to the Hon. Thomas P. Griesa for coordinated or consolidated pretrail proceedings w/the actions pending there and listed on Sch. A. For the Panel JOHN F. NANGLE, Chairman.	RMC
04/24/2000	2	Fld certified true copy of transfer order that the actions listed on the attached Sched. A pending outside the SDNY are hereby transferred to the SDNY, and w/the consent of that court, assigned to the Hon. Thomas P. Griesa for consolidated pretrial proceedings w/the actions pending there & listed on Sched. A. John F. Nangle, Chairman.	RJM
05/03/2000	3	Fld Memo of Defts. Abercrombie & Fitch Co., M.S. Jeffries, S.R. Johnson & M.S. Donnan-Martin in connection with Ptffs' motion to consolidate.	RJM
05/03/2000	4	Fld Memo of Defts. Abercrombie & Fitch Co., M.S. Jeffries, S.R. Johnson, & M.S. Donnan-Martin in opposition to the Hicks Group's Motion for appointment of Lead Ptff. & Co-Lead Counsel.	RJM
05/19/2000	5	Fld Stip & Order that the time for ptffs. to serve their pprs. in reply to defts. Abercrombie & Fitch Co.,... is hereby extended to 5/31/00 from 5/11/00. Ordered, J. Griesa dtd 5/17/00.	RJM
05/31/2000	6	Fld Reply Memo to the Abercrombie Defts' motion in opposition for lead ptff. & co-lead counsel.	RJM
06/01/2000	7	Fld Revised Motion for the appointment of Lead Ptff. & Lead Counsel.	RJM
06/01/2000	8	Fld Reply to Defts' opposition to Hicks Group's motion for appointment of Lead Ptff. & Co-Lead Counsel.	RJM

UNITED STATES DISTRICT COURTHOUSE  
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET  
( Ordered by DOCUMENT No. )

M21-83

Date	Document #	Proceeding	By
09/06/2000	9	Fld Notice of Appearance that the undersigned, Lawrence Iason of Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C., hereby appears as counsel for Todd Slater in the above referenced action.	RJM
09/13/2000	10	IN re:ABERCOMBIE & FITCH:Referst to Docket Numbers... 99 Civ 10617, 99 Civ 10736, 99 Cv 10790 99 Civ 11293, 99 Civ 12139...The motion for consolidation is denied SO ORDERED J. GRIESA dated 9/12/00	RMC
12/14/2000	11	IN RE ABERCROMBIE & FITCH CO., SECURITIES LIT: [This Doc. Relates to All Actions] CONSOLIDATED AMENDED CLASS ACTION COMPLAINT:Lead Plaintiffs, as defined below...and on behalf of all other persons similarly situated, for their Consolidated Amended Class Action (the "Complaint") by their undersigned attorneys, make the following allegations...Jury Trial Demanded Lead Plaintiffs demand a jury trial of all issues so triable.Dated Dec. 14, 2000 Stanley D. Bernstein, Esq.,	RMC

UNITED STATES DISTRICT COURTHOUSE  
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET  
( Ordered by DOCUMENT No. )

M21-83

Date	Document #	Proceeding	By
01/03/2001	12	Fld Stipulation & Order ... that the time for all Defts. to answer, move respecting or otherwise respond to the Consolidated Amended Class Action Complaint dtd 12/14/00 is extended until 2/14/01. Ordered, J. Griesa. dtd 1/2/01.	RJM
02/14/2001	13	Fld N/M by Deft. Lawrence J. Fogel for an order dismissing Ptffs. Consolidated Amended Class Action Complaint against deft. Fogel. Ret. 3/9/01.	RJM
02/14/2001	14	Fld Memo of Law in Support of Deft. Lawrence J. Fogel's motion to dismiss the Consolidated Amended Class Action Complaint.	RJM
02/14/2001	15	Fld Appendix of Unpublished Authorities Cited in Memo of Law in Support of Deft. Lawrence J. Fogel's motion to dismiss the Consolidated Amended Class Action Complaint.	RJM
02/14/2001	16	Fld N/M to dismiss the Consolidated Amended Class Action Complaint. Ret. 3/9/01, 9:30am.	RJM
02/14/2001	17	Fld Memo of Law in Support of the Motion of Defts. Abercrombie & Fitch Co., Michael S. Jeffries... to dismiss the Consolidated Amended Class Action Complaint.	RJM
02/14/2001	18	Fld Declaration of Jay B. Kasner in support of the motion of Defts. Abercrombie & Fitch Co., ... to dismiss Consolidated Amended Class Action Complaint.	RJM
02/19/2001	19	Fld Compendium of Ureported Decisions cited in the Memo of Law in Support of the Motion of Defts. Abercrombie & Fitch Co., ... to dismiss the Consolidated Amended Class Action Complaint.	RJM
03/02/2001	20	Fld Stipulation & Order... that the time for ptffs. to serve & file pprs. in opposition to motions of defts. to dismiss Consolidated Amended Class Action Complaint is extended until 3/23/01... and that time for Defts. to serve & file reply pprs. in further support of defts' motions to dismiss the Cons. Amended Class Action Complaint is extended until 4/6/01. Ordered, J. Griesa. dtd 3/1/01.	RJM
03/23/2001	21	Fld Memo Endorsement on letter dtd 3/22/01 to J. Griesa from Robert J. Berg that ptffs. request for a one week extension until 3/30/01 to file & serve their brief is approved. Ordered, J. Griesa.	RJM



UNITED STATES DISTRICT COURTHOUSE  
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET  
( Ordered by DOCUMENT No. )

M21-83

Date	Document #	Proceeding	By
03/30/2001	22	Fld Lead Ptffs' Memo of Law in opposition to Defts' Motion to Dismiss the Consolidated Amended Class Action Complaint.	RJM
03/30/2001	23	Fld Declaration of Robert J. Berg in opposition to the Motions of Defts. Abercrombie & Fitch Co., Michael S. Jeffries... to dismiss the Consolidated Amended Class Action Complaint.	RJM
04/16/2001	24	Fld letter dtd 4/11/01 from Steven E. Cauley that the law firm of Cauley Geller Bowman & Coates, LLP has changed its addresses to the following: Mailing Address: Cauley Geller Bowman & Coates, LLP PO Box 25438 Little Rock, AR 72221-5438  Physical Address & address for all FedEx/UPS: Cauley Geller Bowman & Coates LLP 11311 Arcade Drive, Ste. 200 Little Rock, AR 72212  San Diego Address: Cauley Geller Bowman & Coates, LLP 600 West Broadway, Ste. 930 San Diego, CA 92101	RJM
04/20/2001	25	Fld Memo of Law in further support of Deft. Lawrence J. Gogel's motion to dismiss the consolidated Amended Class action complaint.	RJM
04/20/2001	26	Fld Supplemental Appendix of unpublished authorities cited in memo of law in further support of Deft. Lawrence J. Fogel's motion to dismiss the consolidated amended class action complaint.	RJM
04/20/2001	27	Fld Compendium of unreported decisions cited in the Reply Memo of Law in further support of the motion of Defts. Abercrombie & Fitch Co., Michael S. Jeffries & Seth R. Johnson to dismiss the Consolidated Amended Class Action Complaint.	RJM
04/20/2001	28	Fld Reply Memo of Law in Further Support of the motion of Defts. Abercrombie & Fitch Co., Michael S. Jeffries & Seth R. Johnson to dismiss the Consolidated Amended Class Action Complaint.	RJM

UNITED STATES DISTRICT COURTHOUSE  
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET  
( Ordered by DOCUMENT No. )

M21-83

Date	Document #	Proceeding	By
08/09/2001	29	Fld Notice of change of Firm Name that as of 7/1/01, Berman, DeValerio & Pease LLP has changed its name to Berman DeValerio Pease Tabacco Burt & Pucillo.	RJM

UNITED STATES DISTRICT COURTHOUSE  
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET  
( Ordered by DOCUMENT No. )

M21-83

Date	Document #	Proceeding	By
06/17/03	30	Fld Notice of Appearance that John Halebian & Frederick W. Gerkens III of the law firm Lovell Stewart Halebian, LLP hereby appear as additional counsel for Ted Hicks, lead ptff. in In Re Abercrombie & Fitch Co. Securities Lit., Civ. Action #M21-83.	RJM
10/30/03	31	Fld Declaration of Stanley D. Bernstein in Opposition to Defts' Motions to Dismiss.	RJM
11/17/03	32	Fld Memorandum Opinion No. 89335 that the motions of defts A&F, Jeffries, Johnson & Fogel to dismiss the complaint are denied. The motion of deft. Donnan-Martin to dismiss the complaint as to her is granted. Ordered, J. Griesa. dtd 11/14/03.	RJM
12/02/03	33	Fld N/M for reconsideration or reargument of the Opinion & Order dtd 11/14/03 & entered on 11/17/03 denying Defts' Motion to Dismiss, before the Hon. Thomas P. Griesa. Return Date not indicated. Received in N.D. Box on 12/2/03, 6:06pm.	RJM
12/02/03	34	Fld Memo of Law in Support of the Motion of Defts Abercrombie & Fitch Co., Michael S. Jeffries & Seth R. Johnson for reconsideration or reargument of the Courts Opinion & Order dtd 11/14/03 & entered on 11/17/03 denying Defts' Motion to Dismiss. Received in N.D. Box on 12/2/03, 6:06pm.	RJM
12/03/03	35	Fld N/M by Deft. Lawrence J. Fogel for reconsideration of Court's Opinion & Order dtd 11/14/03 denying Fogel's motion to dismiss Ptf's Consolidated Amended Class Action Complaint. Return date to be determined by the Court.	RJM
12/03/03	36	Fld Memo of Law in Support of Deft. Lawrence J. Fogel's motion for reconsideration or reargument of the Court's 2/17/03 opinion denying the motion to dismiss.	RJM
12/10/03	37	Fld Stipulation extending Defts. time to Answer the Consolidated Amended Class Action Complaint... that the time within which Defts. Abercrombie & Fitch Co., Michael S. Jeffries, Seth R. Johnson & Lonnie Fogel may have to answer the consolidated amended class action complaint be extended through & including 1/6/04. This Document relates to All Cases. Ordered, J. Griesa. dtd 12/9/03.	RJM
12/15/03	38	Fld Transcript of Record of Proceedings before J. Griesa on 10/29/03, 4:30pm.	RJM

UNITED STATES DISTRICT COURTHOUSE  
SOUTHERN DISTRICT OF NEW YORK

MISCELLANEOUS DOCKET  
( Ordered by DOCUMENT No. )

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Date	Document #	Proceeding	By
12/15/03	39	Fld Lead Ptffs' Consolidated Memo of Law in Opposition to Defts' Motions for Reconsideration or Reargument of the Courts Order denying their Motions to Dismiss. This Document relates to All Cases.	RJM

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Date	Document #	Proceeding	By
01/07/04	40	Fld Stipulation extending Defts' time to file a Reply Brief in Further Support of the Motions for Reconsideration or Reargument & to answer the consolidated amended class action complaint... the time within which defts. Abercrombie & Fitch & Co., Michael S. Jeffries, Seth R. Johnson & Lawrence J. Fogel may have to file reply memoranda of law in further support of their Motions for Reconsideration or Reargument of the Court's Opinion & Order dtd 11/14/03 & entered on 11/17/03 be extended to 1/9/04... that the time within which defts. Abercrombie & Fitch Co., Michael S. Jeffries, Seth R. Johnson & Lawrence J. Fogel may have to answer the consolidated amended class action complaint be extended to 1/30/04. Ordered, J. Griesa. dtd 1/5/04.	RJM
01/09/04	41	Fld Reply Memo of Law in Further Support of Deft. Lawrence J. Fogel's Motion for reconsideration or reargument of the Court's opinion dtd 11/14/03 & entered on 11/17/03 denying the motion to dismiss.	RJM
01/09/04	42	Fld Reply Mrmo of Law in Further Support of the Motion of Defts. Abercrombie & Fitch Co., Michael S. Jeffries & Seth R. Johnson for consideration or reargument of the Courts Opinion & Order dtd 11/14/03 & entered on 11/17/03 denying Defts' Motion to Dismiss.	RJM
02/02/04	43	Fld Stipulation Extending Defts' Time to Answer the Consolidated Amended Class Action Complaint... that the time within which defts Abercrombie & Fitch Co., Michael S. Jeffries, Seth R. Johnson & Lawrence J. Fogel may have to answer the consolidated amended class action complaint be extended through & including 3/1/04. Ordered, J. Griesa. dtd 1/30/04.	RJM
02/23/04	44	Fld Order that Defts. have moved for reconsideration or reargument of the opinion dtd 11/14/03. The Motions are denied. Ordered, J. Griesa.	RJM
03/01/04	45	Fld Answer to Consolidated Amended Class Action Complaint. This document relates to all cases.	RJM
03/01/04	46	Fld Rule 7.1 Disclosure Statement by Abercrombie & Fitch.	RJM

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Date	Document #	Proceeding	By
03/01/04	47	Fld Answer to Consolidated Amended Class Action Complaint by Deft. Lawrence J. Fogel. This Document relates to All Documents.	RJM
04/01/04	48	Fld N/M by Lead Ptffs. Ted Hicks... for an Order that this case be maintained as a class action and appointing Lead Ptffs as Class Representatives. No Return Date indicates. Proposed Order attached.	RJM
04/01/04	49	Fld Memo of Law in Support of Lead Ptff's Motion for Class Certification.	RJM
04/01/04	50	Fld Declaration of Robert J. Berg in Support of Lead Ptffs' Motion for Class Certification. This Document relates to All Cases.	RJM
05/21/04	51	Fld Report of Parties' Planning Meeting Purs. to Rule 26(f)... This Document relates to All Cases. Ordered, J. Griesa. dtd 5/19/04.	RJM
06/28/04	52	Fld Stipulation Extending Deadlines concerning Class Certification... The time within which the parties have to conduct all discovery relating to class certification is extended to & including 8/19/04; The time within which defts. have to file memo of law in opposition to class certification is extended through & including 9/16/04; The time within which ptffs. have to reply is extended through & including 10/22/04. Ordered, J. Griesa. dtd 6/23/04. This document relates to all cases.	RJM
06/28/04	53	Fld Revised Report of Parties' Planning Meeting purs. to Rule 26(f). This Document relates to all cases.	RJM
08/24/04	54	Fld Second Revised Report of Parties' Planning Meetings purs. to Rule 26(f) with regards to a series of teleconferences recently held, the latest on 8/9/04... as set forth in said Report. Ordered, J. Griesa. dtd 8/20/04. This Document relates to all cases.	RJM
08/24/04	55	Fld Stipulation extending Discovery Deadlines... that the time within which Deft. Lawrence J. Fogel may have to produce any & all documents relating to merits & not subject to an outstanding objection be extended through & including 8/27/04... and as further set forth in said stipulation. Ordered, J. Griesa.	RJM

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Date	Document #	Proceeding	By
08/31/04	56	Fld Stipulation & Order Governing Confidential Material... "Regarding the procedures to be followed that shall govern the holding of Confidential Information." Ordered, J. Griesa. dtd 8/27/04.	RJM
10/27/04	57	Fld Stipulation Extending Discovery Deadlines that the time within which Defts. Abercrombie & Fitch Co., Michael S. Jeffries & Seth R. Johnson may have to complete document production relating to merits be extended through & including 12/13/04, with the A&F Defts. having already commenced their rolling production of documents; all discovery to be completed by 12/20/04; Defts. memo of law in oppositin to class certification due 1/20/05; Ptffs reply memo due on 2/21/05; and as further set forth in said stipulation... Ordered, J. Griesa.	RJM
10/27/04	58	Fld Third Revised Report of Parties' Planning Meetings purs. to Rule 26(f)... Recent discussions have resulted in an agreement to extend all discovery & briefing deadlines by 60 days and as further set forth in this Order... Ordered, J. Griesa. dtd 10/26/04.	RJM
12/17/04	59	Fld Transcript of Record of Proceedings held on 11/23/04, 12:06pm. before J. Griesa.	RJM

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Date	Document #	Proceeding	By
01/05/05	60	Fld Fourth Revised Report of Parties' Planning Meetings purs. to Rule 26f, a series of teleconferences involving all parties have occurred since 3/2/04. Recent discussions have resulted in an agreement to extend all remaining discovery & briefing deadlines as set forth in said Order. This Document relates to All Cases. Ordered, J. Griesa. dtd 12/21/04.	RJM
01/05/05	61	Fld STIPULATION EXTENDING DISCOVERY DEADLINES: That the time within which the parties may have to conduct all discovery relating to class certification be extended through & including 1/31/05; defts. response due 3/2/05; ptffs reply to response due 4/4/05; the time within which all parties may have to complete all merits discovery be extended through & including 5/18/05, and; the time within which all parties may have to conduct expert discovery, file experts' reports & file rebuttal experts' reports, if any, be extended through & including 11/4/05. This Document relates to All Cases. Ordered, J. Griesa. dtd 12/21/04.	RJM
12/30/04	62	Fld Notice of Motion for Admission pro hac vice of Charles W. Schwartz.	RJM
01/18/05	63	Fld Order... The motion is granted, and Mr. Levine may appear & participate in this matter upon payment of the necessary fee. Ordered, J. Griesa. dtd 1/13/05.	RJM
01/20/05	64	Fld Notice of Change of Firm Name & Address that the name of our Firm is Cadwalader, Wickersham & Taft LLP. Please take further notice that effective 1/18/05, Cadwalader, Wickersham & Taft LLP, Counsel for Deft. Lawrence J. Fogel in this captioned matter, has changed its address to: Cadwalader, Wickersham & Taft LLP One World Financial Center New York, New York 10281 The Firm's tel. number (212) 504-6000 & fax number (212) 504-6666 will not change.	RJM
02/23/05	65	Fld Supplemental Declaration of John Halebian in further support of Ptffs' Motion for Class Certification. This Document relates to All Cases.	RJM



UNITED STATES DISTRICT COURTHOUSE  
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Date	Document #	Proceeding	By
04/07/05	66	Fld Fifth Revised Report of Parties' Planning Meetings Purs. to Rule 26(f): The parties exchanged initial disclosure statements on 4/5/04; Defts. produced on 4/5/04 copies of relevant Abercrombie & Fitch Co. insurance policies; Ptffs moved for class certification on or around 4/5/04... Defts shall file memo of law in opposition to class certification by 4/8/05; Ptffs reply due 5/20/05; All merit discovery due 9/30/05... All party & non-party merits depositions shall be conducted between 3/2/05 - 9/30/05. The parties agree that they shall use their best good faith efforts to coordinate the scheduling of all depositions among the parties; All expert discovery shall commence on 9/30/05 & be completed by 3/16/06; Reports from experts retained by ptffs under Rule 26(a)(2) shall be produced by 11/1/05; Reports from experts retained by defts. under Rule 26(a)(2) shall be produced by 12/2/05; Ptffs' rebuttal experts' reports, if any, shall be produced by 1/3/06; Defts' rebuttal experts' reports, if any, shall be produced by 2/3/06; Depositions of both ptffs' & defts' experts & rebuttal experts shall be completed by 3/16/06... and as further set forth in said Order. This Document relates to All Cases. Ordered, J. Griesa. dtd 4/6/05.	RJM
04/07/05	67	Fld Stipulation extending deadlines that the time within which defts. may have to file memo of law in opposition to class certification be extended through & including 4/8/05; Ptffs reply due 5/20/05; time for all merit discovery is extended to 9/30/05; All parties may conduct expert discovery, file experts' reports and file rebuttal experts' reports, if any, be extended through & including 3/16/06... This Document relates to All Cases. Ordered, J. Griesa. dtd 4/6/05.	RJM
04/08/05	68	Fld Declaration of Steven J. Koleeny in Support of the Defts' Memo of Law in Opposition to Ptffs' Motion for Class Certification. Received in N.D. Box on 4/8/05, 10:52pm. This Document relates to All Cases.	RJM
04/08/05	69	Fld Compendium of unreported decisions cited in the Memo of Law in Opposition to Ptffs' Motion for Class Certification. This Document relates to All Cases. Received in N.D. Box on 4/8/05, 10:52pm.	RJM

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Date	Document #	Proceeding	By
04/08/05	70	Fld Defts' Memo of Law in Opposition to Ptffs' Motion for Class Certification. This Document relates to All Cases. Received in N.D. Box on 4/8/05, 10:52pm.	RJM
04/08/05	71	Fld Declaration of Dr. Frederick C. Dunbar in Opposition to Ptffs' Motion for Class Certification. This Document relates to All Cases. Received in N.D. Box on 4/8/05, 10:52pm.	RJM
05/05/05	72	Fld Memo-Endorsed Letter addressed to Judge Thomas P. Griesa from Robert Berg, dtd 5/2/2005; approving counsel's request for an extension of the page limit for a reply brief from the usual 10 page limit to 25 pages. So Ordered J. Griesa dtd 5/4/2005.	KKC
05/20/05	73	Fld Affidavit of Jon Koslow in further Support of Ptffs' Motion for Class Certification and in Response to the Dunbar Report. This Document relates to all cases.	RJM
05/20/05	74	Fld Lead Ptffs' Reply Memo of Law in Response to Defts' Opposition and in further support of motion for Class Certification. This Document relates to all cases.	RJM
05/20/05	75	Fld Declaration of John Halebian in Response to Defts' opposition and in further Support of Ptffs' Motion for Class Certification. This Document relates to all cases.	RJM
06/28/05	76	Fld Stipulation & proposed Order extending certain deadlines in fifth revised report of parties' planning meetings purs. to 26(f)... that the deadline by which all parties shall complete all merits discovery is extended from 9/30/05 to 11/30/05; expert discovery deadline for all parties is extended from 3/16/06 to 5/16/06; Reports from experts retained by ptffs. shall be produced by 1/3/06; Reports from experts retained by defts shall be produced by 2/2/06; Ptffs' rebuttal, if any, due 3/3/06; Defts. rebuttal, if any, due 4/3/06. Ordered, J. Cote. dtd 6/10/05. This Document relates to All Cases.	RJM

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Date	Document #	Proceeding	By
08/03/05	77	Fld Stipulation & Proposed Order extending certain deadlines: The deadline by which all parties shall complete all merits discovery is extended from 11/30/05 to 1/30/06; All parties shall complete expert discovery on 7/16/06 (deadline extended from 5/16/06); Reports from experts retained by ptffs. shall be produced by 3/3/06; Reports from experts retained by defts. shall be produced by 4/3/06; Ptffs rebuttal reports, if any, shall be produced by 5/3/06; Defts. rebuttal expert reports, if any, shall be produced by 6/5/06. Ordered, J. Daniels. dtd 7/22/05	RJM

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M21-83

Date	Document #	Proceeding	By
01/27/06	78	Fld Stipulation & Proposed Order extending certain Deadlines... It is agreed by & between the undersigned attorneys for the parties as follows: All parties shall complete all merits discovery is extended from 1/30/06 to 3/31/06; All parties shall complete expert discovery is extended from 7/17/06 to 9/18/06; Reports from experts retained by ptffs. under Rule 26(a)(2) shall be produced by 5/3/06; Reports from experts retained by defts. under Rule 26(a)(2) shall be produced by 6/5/06; Ptffs' rebuttal expert reports due 7/3/06; Defts' rebuttal expert reports due 8/7/06. Ordered, J. Griesa.	RJM

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Date	Document #	Proceeding	By
01/27/2006	78	Fld Stipulation & Proposed Order extending certain Deadlines... It is agreed by & between the undersigned attorneys for the parties as follows: All parties shall complete all merits discovery is extended from 1/30/06 to 3/31/06; All parties shall complete expert discovery is extended from 7/17/06 to 9/18/06; Reports from experts retained by ptffs. under Rule 26(a)(2) shall be produced by 5/3/06; Reports from experts retained by defts. under Rule 26(a)(2) shall be produced by 6/5/06; Ptffs' rebuttal expert reports due 7/3/06; Defts' rebuttal expert reports due 8/7/06. Ordered, J. Griesa.	RJM
04/06/2006	79	Fld Stipulation & Proposed Order extending certain deadlines. All parties shall complete all merits discovery is extended from 3/31/06 to 5/19/06; Deadlines by which all parties shall complete expert discovery is extended from 9/18/06 to 11/8/06; Reports from experts retained by ptffs. under 26(a)(2) shall be produced by 6/21/06; Reports from experts retained by defts. under Rule 26(a)(2) shall be produced by 7/24/06; Ptffs rebuttal expert reports, if any, shall be produced by 8/21/06, and Defts. rebuttal expert reports, if any, shall be produced by 9/27/06. Ordered, J. Griesa. dtd 4/5/06. This Document relates to All Actions.	RJM
04/20/2006	80	Fld Stipulation and signed Proposed Order Extending Certain Deadlines... that the deadline by which all parties shall complete all merits discovery is extended from 5/19/06 to and including 8/15/06; the deadline by which all parties shall complete expert discovery, including expert depositions is extended from 11/8/06 to and including 2/2/07; and Reports from experts retained by plaintiffs under Rule 26(a)(2) shall be produced by 9/15/06; and Reports from experts retained by defendants under Rule 26(a)(2) shall be produced by 10/16/06; Ptffs' rebuttal expert reports, if any, shall be produced by 11/14/06; and defts' rebuttal expert reports, if any, shall be produced by 12/12/06. This Document relates to All Cases. Ordered, J. Griesa. dtd 4/19/06.	RJM

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Date	Document #	Proceeding	By
10/31/2006	81	Filed Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings; the Court hereby certifies, under F.R.C.P. 23, for the sole purpose of effectuating the Settlement, a Class defined as all persons who purchased shares of A&F common stock between 10/8/1999 through and including 10/13/1999... A Settlement Fairness Hearing pursuant to Rule 23(e) of the F.R.C.P. is scheduled to be held before the Court on 1/30/2007 at 4:30 pm... All other rulings are set forth in this Order. Signed by Judge Thomas P. Griesa on 10/25/2006. EOD: 11/1/2006.	KKC

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Date	Document #	Proceeding	By
01/24/07	82	Fld Declaration of Robert J. Berg in Support of Proposed Class Action Settlement, Plan of Allocation, and Joint Petition for Attorneys' Fees and Disbursements. This Document relates to All Cases. Exhibits A through M attached.	RJM
01/24/07	83	Fld Plaintiffs' Memo of Law in Support of Final Approval of Settlement and Plan of Allocation. This Document relates to All Cases.	RJM
01/24/07	84	Fld Petition of Ptffs' Counsel for an award of Attorneys' Fees, Reimbursement of Expenses, and awards to the Class Plaintiffs. This Document relates to All Cases.	RJM
02/05/07	85	Fld Order and Final Judgment... that Ptffs' Counsel are hereby awarded 33 1/3% of the Gross Settlement Fund in fees amounting to \$2,016,666.00 which sum the Court finds to be fair and reasonable, and \$454,688.73 in reimbursement of expenses, which amounts shall be paid within 6 businessdays of this Order & Final Judgment... Lead Ptff. Ted Hicks is hereby awarded \$15,000.00, Lead Ptff Frank Haydu is hereby awarded \$12,500.00, Lead Ptff. Randy Silver is hereby awarded \$15,000.00 and Lead Ptff. John Sellew is hereby awarded \$3,600.00 which amounts shall be paid from the Gross Settlement Fund... The Settlement has created a fund of \$6,050,000.00 in cash and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Ptffs' Counsel; Over 22,000 copies of the Notice were disseminated to putative Class Members. Such Notice disclosed that Ptffs' Counsel were moving for attorneys' fees in the amount no greater than one third of the Settlement Fund and for reimbursement of expenses in an amount no greater than \$550,000.00... Ptffs. Counsel have devoted approximately 15,000 hours, with a lodestar value of \$7,200,060.50 to achieve the Settlement... and as further set forth regarding the procedures to be followed that shall govern the handling of this Order and Final Judgment. This Document relates to All Cases. Ordered, J. Griesa. dtd 1/30/07. EOD 2/7/07.	RJM





**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:04-md-01644-TPG**

In Re: Elevator and Escalator Antitrust Litigation

Assigned to: Judge Thomas P. Griesa

Member case: (View Member Case)

Related Cases: [1:05-cv-01301-TPG](#)[1:05-cv-01304-TPG](#)[1:05-cv-01302-TPG](#)[1:04-cv-09751-TPG](#)[1:04-cv-09750-TPG](#)

Cause: 15:15 Antitrust Litigation

Date Filed: 12/10/2004

Jury Demand: Plaintiff

Nature of Suit: 410 Anti-Trust

Jurisdiction: Federal Question

Date Filed	#	Docket Text
12/10/2004	<u>1</u>	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL... that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Middle District of Florida, District of New Jersey, Eastern District of Pennsylvania, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Thomas P. Griesa, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by Judge MDL Panel on 12/07/2004) (mj, ) (Entered: 12/21/2004)
12/10/2004		Magistrate Judge Douglas F. Eaton is so designated. (admin, ) (Entered: 12/21/2004)
12/10/2004		CASES ORIGINATING FROM THE SOUTHERN DISTRICT OF NEW YORK: 1:04-cv-01178; 1:04-cv-02785; 1:04-cv-02786; 1:04-cv-03225; 1:04-cv-03229; 1:04-cv-03308; 1:04-cv-03569; 1:04-cv-03857; 1:04-cv-03963; 1:04-cv-05662; 1:04-cv-05663.. (admin, ) (Entered: 12/21/2004)
01/11/2005	<u>2</u>	RULE 7.1 DISCLOSURE STATEMENT. Document filed by Thyssenkrupp AG.(Myers, Terry) (Entered: 01/11/2005)
01/11/2005	<u>3</u>	MDL TRANSFER IN: Received certified copy of docket entries and documents numbered 1-12 from the United States District Court - Eastern District of Pennsylvania. Case Number: 2:04-cv-2404 (MAM), S.D.N.Y. Case Number: 1:04-cv-9752 (TPG). Associated Cases: 1:04-md-01644-TPG,1:04-cv-09752-TPG(jjm, ) (Entered: 01/20/2005)
01/20/2005		MDL TRANSFER IN: Received certified copy of docket entries and documents numbered 1-33 from the United States District Court - MDL

		District of Florida. Case Number: 2:04-cv-318 (VMC), S.D.N.Y. Case Number: 1:04-cv-9750 (TPG). Associated Cases: 1:04-md-01644-TPG,1:04-cv-09750-TPG(jjm, ) (Entered: 02/09/2005)
02/03/2005	<u>4</u>	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL (CTO-1)... that pursuant to 28 U.S.C. 1407, the actions listed on the attached schedule A and pending in the District of Connecticut C.A. No. 3:04-1441; District of New Mexico, C.A. No. 1:04-1094; Eastern Dist. of Pa., C.A. No. 2:04-4673 and C.A. No. 2:04-5224, and the same hereby are, transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Thomas P. Griesa, for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A. (Signed by MDL Panel on 1/6/05). (Entered: 02/08/2005)
02/23/2005	<u>5</u>	NOTICE of Voluntary Dismissal (this document relates to 04cv9757); pursuant to Rule 41(a)(1) of the F.R.C.P., plaintiff Mulberry Court Associates voluntarily dismisses action 04cv9757 without prejudice. (Signed by Judge Thomas P. Griesa on 2/23/2005) Filed In Associated Cases: 1:04-md-01644-TPG,1:04-cv-09757-TPG(kkc, ) (Entered: 03/01/2005)
03/08/2005	<u>6</u>	NOTICE of Withdrawal (this document relates to 04cv9752); plaintiff Parkway Corporation gives notice of its withdrawal from action 04cv9752. (Signed by Judge Thomas P. Griesa on 3/7/2005) Filed In Associated Cases: 1:04-md-01644-TPG,1:04-cv-09752-TPG(kkc, ) (Entered: 03/08/2005)
03/29/2005	<u>7</u>	NOTICE of Withdrawal. Document filed by Campbell Lodging, Inc.. (Lipofsky, Joseph) (Entered: 03/29/2005)
04/07/2005	<u>8</u>	NOTICE of Withdrawal (this document relates to 04cv9754); plaintiff Kings Village Corporation hereby gives notice of its withdrawal from action 04cv9754. (Signed by Judge Thomas P. Griesa on 4/5/2005) Filed In Associated Cases: 1:04-md-01644-TPG,1:04-cv-09754-TPG(kkc, ) (Entered: 04/11/2005)
04/07/2005	<u>9</u>	NOTICE of Withdrawal (this document relates to 04cv9756); plaintiff Downtowner Hotel & Spa hereby gives notice of its withdrawal from action 04cv9756. (Signed by Judge Thomas P. Griesa on 4/6/2005) Filed In Associated Cases: 1:04-md-01644-TPG,1:04-cv-09756-TPG(kkc, ) (Entered: 04/11/2005)
04/07/2005	<u>11</u>	NOTICE of Withdrawal (this document relates to 05cv3676); that Plaintiff Campbell Lodging, Inc. hereby gives notice of its withdrawal from action 05cv3676. (Signed by Judge Thomas P. Griesa on 4/6/2005) Filed In Associated Cases: 1:04-md-01644-TPG,1:05-cv-03676-TPG(kkc, ) (Entered: 04/11/2005)
04/11/2005	<u>10</u>	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER (CTO-2) FROM THE MDL PANEL... that pursuant to 28 U.S.C. 1407, the action listed on the attached order and pending in the Eastern District of Pennsylvania, 2:04-4696, and the same hereby is,

		transferred to the Southern District of New York, with the consent of that court, assigned to the Honorable Judge Thomas P. Griesa, for coordinated or consolidated pretrial proceedings with the action pending in that district and listed on the order. (Signed by MDL Panel on 3/10/2005) Filed In Associated Cases: 1:04-md-01644-TPG,1:04-cv-01178-TPG,1:04-cv-03963-TPG,1:04-cv-09750-TPG,1:04-cv-09751-TPG, 1:04-cv-09753-TPG,1:04-cv-09755-TPG,1:05-cv-01301-TPG (kkc, ) (Entered: 04/11/2005)
05/02/2005	12	NOTICE of Voluntary Dismissal, PLEASE TAKE NOTICE THAT Pursuant to Rule 41(a) of the F.R.C.P.. Plaintiff The Lakes Restaurant, Inc. hereby voluntarily dismisses its action in this matter without prejudice, without costs, and without fees. This Document pertains to 05 Civ. 1303-TPG. (Signed by Judge Thomas P. Griesa on 4/29/05) (dt, ) (Entered: 05/03/2005)
05/02/2005	13	NOTICE of Voluntary Dismissal, PLEASE TAKE NOTICE THAT pursuant to Rule 41(a) of the F.R.C.P., Plaintiff CSM Corporation hereby voluntarily dismisses its action in this matter without prejudice, without costs, and without fees. This document pertains to 05 Civ. 1304-TPG. (Signed by Judge Thomas P. Griesa on 4/29/05) (dt, ) (Entered: 05/03/2005)
05/02/2005	14	NOTICE of Voluntary Dismissal, PLEASE TAKE NOTICE THAT pursuant to Rule 41(a) of the F.R.C.P., Plaintiff Wrightville Builders, Inc. hereby voluntarily dismisses its action in this matter without prejudice, without costs, and without fees. This document pertains to 04 Civ. 978-TPG. (Signed by Judge Thomas P. Griesa on 4/29/05) (dt, ) (Entered: 05/04/2005)
07/25/2005	15	SECOND CONSOLIDATED AMENDED CLASS ACTION COMPLAINT Jury Trial Demanded against United Technologies Corporation, Otis Elevator Company, Kone Corporation, Schindler Holding, Ltd., Schindler Elevator Corporation, Thyssenkrupp AG, Thyssenkrupp Elevator Capital Corp., Kone Inc., ThyssenKrupp Elevator Corp.Document filed by Joseph M. Bennardi, Rochdale Village, Inc., Brimingham Building Trades Towers, Inc., Triangle Housing Associates, L.P., Bay Crest Condominium Association, Olen Commercial Realty Corporation, Riverbay Corporation, D. F. Chase, Inc., Towers of Coral Springs, Ltd., 181 Maple Avenue Associates, Lenox Road Associates, 1775 Housing Associates. This Document relates to 04-1178.(rjm, ). Also states This Document relates to All Actions. Modified on 8/3/2005 (rjm, ). (Entered: 08/03/2005)
07/25/2005		Set Answer Due Date purs. to 15 Amended Complaint,,, as to United Technologies Corporation answer due on 8/8/2005; Otis Elevator Company answer due on 8/8/2005; Kone Corporation answer due on 8/8/2005; Schindler Holding, Ltd. answer due on 8/8/2005; Schindler Elevator Corporation answer due on 8/8/2005; Thyssenkrupp AG answer due on 8/8/2005; Thyssenkrupp Elevator Capital Corp. answer due on 8/8/2005; Kone Inc. answer due on 8/8/2005; ThyssenKrupp Elevator Corp. answer due on 8/8/2005. (rjm, ) (Entered: 08/03/2005)

10/26/2006	16	NOTICE of of Change of Law Firm Association for A. Paul Victor. Document filed by Thyssenkrupp Elevator Capital Corp., ThyssenKrupp Elevator Corp.. (Victor, Allan) (Entered: 10/26/2006)
03/30/2007	17	NOTICE OF CHANGE OF ADDRESS by Nadeem Faruqi on behalf of all plaintiffs. New Address: FARUQI & FARUQI, LLP, 369 Lexington Avenue, 10th Floor, New York, NY, 10017-6531, (212) 983-9330. (Faruqi, Nadeem) (Entered: 03/30/2007)

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BEFORE THE JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION

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IN RE: VIRGIN MOBILE IPO LITIGATION ) MDL DOCKET NO. 1931  
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COMPENDIUM OF UNREPORTED AUTHORITIES CITED IN THE REPLY  
MEMORANDUM OF LAW OF THE DEFENDANTS IN FURTHER  
SUPPORT OF THEIR MOTION FOR TRANSFER OF RELATED SECURITIES  
ACTIONS TO THE SOUTHERN DISTRICT OF NEW YORK

SIMPSON THACHER & BARTLETT LLP  
425 Lexington Avenue  
New York, New York 10017-3954  
(212) 455-2700

*Counsel for Defendants Virgin Mobile USA,  
Daniel H. Schulman, Jonathan Marchbank,  
John D. Feehan, Jr., Frances Brandon-Farrow,  
Douglas B. Lynn, Mark Poole, Robert  
Samuelson, L. Kevin Cox, Thomas O. F  
and Kenneth T. Stevens*

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**Case**

*AtheroGenics Sec. Litig.*, No. 05 Civ. 00061 (RJH),  
2006 U.S. Dist. LEXIS 15786 (S.D.N.Y. 2006) ..... 1

*In re Methionine Antitrust Litig.*, MDL No. 1311 (JFN),  
1999 U.S. Dist. LEXIS 19206 (J.P.M.L. Dec. 8, 1999)..... 2

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LEXSEE 2006 US DIST LEXIS 15786

**In re AtheroGenics Securities Litigation**

05 Civ. 00061

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK**

*2006 U.S. Dist. LEXIS 15786*

**March 31, 2006, Decided**

**March 31, 2006, Filed**

**PRIOR HISTORY:** *Andrada v. Atherogenics, Inc.*,  
2005 U.S. Dist. LEXIS 6777 (S.D.N.Y., Apr. 18, 2005)

**COUNSEL:** [\*1] For The Billings Group, Lead Plaintiff: Jeffrey A. Berens, Kip B. Shuman, Dyer and Shuman, Denver, CO; Joseph E. White, Milberg, Weiss Bershad & Schulman LLP, Boca Raton, FL; Lauren D. Antonino, Martin D. Chitwood, Atlanta, GA; Maya Saxena, Boca Raton, FL; Peter Edward Seidman, Steven G. Schulman, Sharon Maine Lee, Milberg Weiss Bershad & Schulman LLP, New York, NY.

Michele Billings, Lead Plaintiff, Pro se.

Robert Billings, Lead Plaintiff, Pro se.

Michele Fortunato, Lead Plaintiff, Pro se.

Andrew May, Lead Plaintiff, Pro se.

For Purisma Andrada, Individually and on behalf of all others similarly situated, Plaintiff: Eric James Belfi, Murray, Frank & Sailer, LLP, New York, NY.

For Valerie Faulkner, Consolidated Plaintiff: David Avi Rosenfeld, Lerach, Coughlin, Stoia, Geller, Rudman & Robbins, LLP, Melville, NY.

For Atherogenics, Inc., Russell Medford, Mark Colonese, Robert Scott, Defendants: Dawn M. Wilson, Wilmer, Cutler, Pickering, Hale & Dorr L.L.P., Mclean, VA.

For Martin A. Wasserman, Consolidated Defendant: Dawn M. Wilson, Wilmer, Cutler, Pickering, Hale & Dorr L.L.P., Mclean, VA.

For Russell Jeffords, Movant: Mario Alba, Jr, Lerach, [\*2] Coughlin, Stoia, Geller, Rudman & Robbins, LLP, Melville, NY.

**JUDGES:** Richard J. Holwell, United States District Judge.

**OPINION BY:** Richard J. Holwell

**OPINION**

**MEMORANDUM OPINION AND ORDER**

Defendants AtheroGenics, Inc. ("AtheroGenics"), Michael Henos, Russell Medford, Mark Colonese, Robert Scott, and Martin Wasserman) (the "individual defendants," and together with AtheroGenics collectively, "defendants"), have moved pursuant to 28 U.S.C. § 1404(a) to transfer this federal securities class action to the United States Court for the Northern District of Georgia. For the reasons set forth below, the motion is granted.

**BACKGROUND**

Six putative class action complaints have been filed against defendants in this matter: two in the Southern District of New York,<sup>1</sup> which were consolidated as the above-captioned action by order of this Court on April 18, 2005, and four in the Northern District of Georgia,<sup>2</sup> which plaintiffs voluntarily dismissed on July 14, 2005 following the filing of the instant motion.

1 *Andrada v. Atherogenics, Inc., et al.* (No. 05 Civ. 00061), filed on January 5, 2005; *Faulkner v. Atherogenics, Inc., et al.* (No. 05 Civ. 01938), filed on February 8, 2005. The memorandum opinion and order consolidating these actions also appointed the Billings Group as lead plaintiff and



designated Milberg Weiss Bershad & Schulman LLP, Chitwood & Harley, and Dyer & Shuman LLP as co-lead counsel. *Andrada v. Atherogenics, Inc.*, 2005 U.S. Dist. LEXIS 6777, 2005 WL 912359 (S.D.N.Y. Apr. 19, 2005).

[\*3]

2 *Bassett v. Atherogenics, Inc. et al.* (No. 05 Civ. 00070), filed on January 7, 2005; *Corson v. Atherogenics, Inc. et al.* (No. 05 Civ. 00082), filed on January 10, 2005; *Brahmbhatt v. Atherogenics, Inc., et al.* (No. 05 Civ. 00096), filed on January 11, 2005; *Christian United Fellowship v. Atherogenics, Inc. et al.* (No. 05 Civ. 00211), filed on January 25, 2005.

The actions charge that defendants violated federal securities laws by issuing a series of materially false and misleading statements between September 28, 2004 and December 31, 2004 regarding the clinical trial results of a drug developed by AtheroGenics, a Georgia-based pharmaceutical research company. The plaintiffs allege that these false statements regarding the drug's potential to treat coronary artery disease had the effect of artificially inflating the market price of AtheroGenics's securities in violation of *Section 10(b)* of the Securities Exchange Act of 1934, and *Rule 10b-5* promulgated thereunder; they further allege that the individual defendants are liable as controlling persons of AtheroGenics under *Section [\*4] 20(a)* of the Exchange Act.

According to the complaint,<sup>3</sup> AtheroGenics is a research-based pharmaceutical company, focused on the discovery, development and commercialization of novel drugs for the treatment of chronic inflammatory diseases, including heart disease or atherosclerosis. (Compl. P2.) AtheroGenics's AGI-1067 drug was developed and designed to treat atherosclerosis of the blood vessels of the heart, or coronary artery disease, in a manner that existing therapy could not. (Id. at P 3.) On September 27, 2004, after the markets closed, defendants issued a press release entitled "AtheroGenics Announces Positive Interim Results from CART-2 Study--Data Show Highly Statistically Significant Plaque Regression with AGI-1067 in One-Year Study." (Id. at P24.) The release reported positive preliminary results regarding the drug's ability to reduce the plaque volume associated with coronary atherosclerosis. (Id.) It also announced that these interim results were analyzed by Jean-Claude Tardif, M.D. at the Montreal Heart Institute in Montreal and by Steven Nissen, M.D. at the Cleveland Clinic Foundation in Ohio. (Id.)

3 A consolidated amended complaint has not yet been filed in this action. Citations are to the Faulkner complaint unless otherwise noted.

[\*5] Following this preliminary report, defendants issued another release on November 22, 2004 entitled "AtheroGenics Reports Positive Final Results from CART-2 Clinical Trial of AGI-1067--AGI-1067 Achieves Statistically Significant Plaque Regression Versus Baseline." (Id. at P25.) The release noted positive final data from the CART-2 study. (Id.) That same day,<sup>4</sup> defendants issued a second release with regard to another planned study of the drug, the Phase III ARISE trial, entitled "AtheroGenics Reaches Original Enrollment Target of 4,000 Patients in ARISE Phase III Clinical Trial of AGI-1067--Company Reiterates Plan to Extend Enrollment." In the release, defendants indicated the desire to continue enrollment so "as to accelerate the accumulation of patient years of exposure to the drug." (Id.) Following these November 22 announcements, AtheroGenics' stock price fell by 15%. (Andrada Compl. at P30.)

4 The Andrada complaint gives November 23 as the date of this release. (Andrada Compl. P31.)

On January 3, 2005, AtheroGenics [\*6] announced in another release it had decided to increase the number of patients in the Phase III study, that the study would be longer in duration, and that proposed amendments to the Food and Drug Administration regarding the study would be needed (Id. at PP9, 28.) This news, according to the complaint, caused AtheroGenics's stock to fall 20%. (Id. at P9.) Two days later, defendants disclosed that the SEC and the NASD had both opened informal inquiries "related to our September 27, 2004 announcement of interim results from the CART-2 trial for AGI-1067." (Declaration of Jeffery A. Berens, Esq. ("Berens Decl."), Ex. N at 22 (excerpts from AtheroGenics's SEC Form 10-K for fiscal year 2004).

According to plaintiffs, defendants were aware on or prior to September 27, 2004 of troubling aspects of the Phase IIb trial that would impact both the final results of the trial and the appropriate execution of the ARISE Phase III trial, yet obscured this knowledge and released false information to the market. (Compl. at P5.) Plaintiffs assert defendants were made aware of further study-related problems in November 2004 that they concealed, and that the releases of November 22, 2004 were [\*7] also false and misleading. (Id. at PP6-8.)

## DISCUSSION

*Section 1404(a)* of *Title 28 of the United States Code* provides that: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. 1404(a) (2000). The purpose of this Section is to "prevent waste of time, energy and money and to protect litigants, wit-

nesses and the public against unnecessary inconvenience and expense." *Indian Harbor Ins. Co. v. Factory Mut. Ins. Co.*, 419 F. Supp. 2d 395, 2005 U.S. Dist. LEXIS 17253, 2005 WL 1994017, at \*2 (S.D.N.Y. Aug. 17, 2005).

The "preliminary inquiry is whether the action sought to be transferred is one that might have been brought in the transferee court." *Cavu Releasing, LLC v. Fries*, 419 F. Supp. 2d 388, 2005 U.S. Dist. LEXIS 16783, 2005 WL 1944269 at \*5-6 (S.D.N.Y. Aug. 12, 2005); *Mattel, Inc. v. Robarb's, Inc.*, 139 F. Supp. 2d 487, 490 (S.D.N.Y. 2001) (internal citations omitted). The Exchange Act provides for venue in any district "wherein the defendant is found or is an inhabitant or transacts business." 15 U.S.C. § 78aa. [\*8] Here, the parties do not dispute that the Northern District of Georgia is a district where the action might have originally been brought; indeed, four similar actions were so filed in early 2005. See Lead Pls.' Mem. at 8 n.6.

Once a defendant meets that threshold determination regarding the transferee district, courts will further examine factors such as: (1) the place where the operative facts occurred; (2) the convenience of the parties; (3) the convenience of witnesses; (4) the relative ease of access to sources of proof; (5) the availability of process to compel attendance of unwilling witnesses; (6) the plaintiff's choice of forum; (7) the forum's familiarity with governing law; and (8) trial efficiency and the interests of justice. *Linzer v. EMI Blackwood Music, Inc.*, 904 F. Supp. 207, 216 (S.D.N.Y. 1996) (citing cases). The burden of demonstrating the desirability of transfer will lie "with the moving party, and in considering the motion for transfer, a court should not disturb a plaintiff's choice of forum unless the defendants make a clear and convincing showing that the balance of convenience favors defendants' choice." *Id.* (quoting *Hubbell Inc. v. Pass & Seymore, Inc.*, 883 F.Supp. 955, 962 (S.D.N.Y. 1995)). [\*9] Ultimately, "motions for transfer lie within the broad discretion of the district court and are determined upon notions of convenience and fairness on a case-by-case basis." *In re Cuyahoga Equipment Corp.*, 980 F.2d 110, 117 (2d Cir. 1992) (internal citations omitted).

While there is "no *per se* rule requiring or presumptively favoring the transfer of a securities-fraud action to the district where the issuer is headquartered," such transfers to the issuer's home district are routine "as a practical matter." *In re Hanger Orthopedic Group, Inc. Sec. Litig.*, 418 F. Supp. 2d 164, 2006 U.S. Dist. LEXIS 7549, 2006 WL 466485, at \*3 (E.D.N.Y. Feb. 28, 2006) (collecting cases). Although the plaintiffs in the four Georgia actions voluntarily dismissed those cases in the days following the filing of the instant motion in this action, courts have also noted that "transfer seems especially appropriate where, as here, there are previously

filed actions pending in the defendants' home district." *Langley Partners, L.P. v. Tripath Tech., Inc.*, 2005 U.S. Dist. LEXIS 23004, 2005 WL 2482527 at \*2 (S.D.N.Y. Oct. 6, 2005) (citing *Berman v. Informix Corp.*, 30 F.Supp.2d 653 (S.D.N.Y. 1998) [\*10] and *MBCP Peerlogic, L.L.C. v. Critical Path, Inc.*, 2002 U.S. Dist. LEXIS 23268, 2002 WL 31729626, at \*2 (S.D.N.Y. Dec. 5, 2002).) Here, application of the relevant factors reveals that defendants have met their burden to transfer this action under § 1404(a).

#### *Lead plaintiffs' choice of forum*

A plaintiff's choice of forum "is generally entitled to considerable weight and should not be disturbed unless the balance of the factors is strongly in favor of the defendant." *Berman v. Informix Corp.*, 30 F. Supp. 2d 653, 659 (S.D.N.Y. 1998); see also *Goggins v. Alliance Capital Management, L.P.*, 279 F. Supp. 2d 228, 232 (S.D.N.Y. 2003) (plaintiff's forum choice "is generally accorded more deference" in circumstances where "there is a material connection or significant contact between the forum state and the underlying events allegedly underlying the claim").

However, "while it is axiomatic that a plaintiff's choice of forum is entitled to great consideration, the adage has little weight in stockholder class actions." *Shulof v. Westinghouse Elec. Corp.*, 402 F.Supp. 1262, 1263 (S.D.N.Y. 1975); see also *Lewis v. C.R.I., Inc.*, 2003 U.S. Dist. LEXIS 6362, 2003 WL 1900859, at \*5 (S.D.N.Y. Apr. 17, 2003) [\*11] (collecting cases, and noting that "cases interpreting section 1404(a) have found that representative plaintiffs . . . are entitled to less deference than other plaintiffs."); *Eichenholtz v. Brennan*, 677 F.Supp. 198, 202 (S.D.N.Y. 1988) (in a class action under federal securities laws there will be "numerous potential plaintiffs, each possibly able to make a showing that a particular forum is best suited for the adjudication of the class's claim" and thus less deference to forum choice is appropriate). Thus, in light of the nature of this action, lead plaintiffs' preference for this forum will be accorded only moderate weight, and the below factors will rise in relative significance. *Goggins*, 279 F.Supp.2d at 232.

#### *Locus of operative facts*

In securities fraud actions, "misrepresentations and omissions are deemed to 'occur' in the district where they are transmitted or withheld, not where they are received." *In re Nematron Corp. Secs. Litig.*, 30 F. Supp. 2d 397, 404 (S.D.N.Y. 1998) (quoting *Purcell Graham, Inc. v. National Bank of Detroit*, 1994 U.S. Dist. LEXIS 15196, 1994 WL 584550, at \*4 (S.D.N.Y. Oct. 24, 1994). [\*12] As defendants point out, AtheroGenics headquarters in Alpharetta, Georgia is at the factual center of this case, and the locus of all relevant decisionmaking. At issue

here is the conduct of the defendant corporation and the individual defendants with respect to the disclosures made in the fall of 2004 about the prospects of the new atherosclerosis drug; the press releases and public filings relating to those clinical trials at issue were prepared in Alpharetta. (Declaration of Mark P. Colonnese ("Colonnese Decl.") P12.)

While the CART-2 trial itself took place in Canada (Berens Decl., Exs. B, C), and the Phase III ARISE trial was to be conducted at various locations in North America, the United Kingdom, and South Africa (Berens Decl., Ex. E), the results of the trials were reported to executives and scientists employed by AtheroGenics at its corporate headquarters in Georgia. (Colonnese Decl. P11.) Furthermore, the decision to conduct the interim analysis itself was made in Alpharetta by the Executive Committee of ArtheroGenics. (Supplemental Declaration of Mark. P. Colonnese ("Supp. Colonnese Decl.") P9.) Aside from the sale and purchase of Atherogenics stock by putative class members, [\*13] the dissemination of the press releases, and two study-related New York appearances by defendant CEO Medford,<sup>5</sup> there are no facts tying this action here that would warrant ignoring Georgia's "intimate connection to the events underpinning this case" and its status as the locus of the alleged fraud. *In re Nematron*, 30 F.Supp. at 404; see also *Ravenswood Inv. Co. v. Bishop Capital Corp.*, 2005 U.S. Dist. LEXIS 1388, 2005 WL 236440, at \*6 (S.D.N.Y. Feb. 1, 2005) ("The trading and holding of stock in New York is not, however, a significant contact with the operative facts of this action.").

5 On September 28, 2004, Russell Medford, AtheroGenics' CEO, appeared at CNBC's studios in midtown Manhattan for a taping of "Morning Call" regarding the announcement of the Phase IIb interim findings; the same day, he gave a presentation on the results at Grand Hyatt in New York City for the UBS Global Life Sciences Conference. (Berens Decl., Exs. H, J.) On December 1, 2004, Defendant Medford made an oral presentation on the Phase III ARISE study at the Lazard Life Sciences Conference at the Mandarin Oriental Hotel in New York City. (Compl. P27; Berens Decl., Ex. L.)

[\*14] *Convenience of the parties and witnesses*

All of the individual defendants in this matter are located in the Northern District of Georgia (Colonnese Decl. PP5-9). Defendants have also identified by name at least five potential non-party witnesses who are located in the Atlanta area, and have pointed to eight other potential witnesses in the Northern District who were employed by or on the board of defendant at the requisite

time. (Supp. Colonnese Decl. PP4.) "The convenience of non-party witnesses is usually the most important factor to consider in deciding whether to depart from the plaintiff's choice of forum." *In re Hanger Orthopedic Group, Inc. Sec. Litig.*, 2006 U.S. Dist. LEXIS 7549, 2006 WL 466485, at \*3. Few witnesses with knowledge probative of the alleged fraud are located in New York,<sup>6</sup> and the three potential witnesses involved in the examination of the drug in Canada and Cleveland (Drs. Tardif, Topol, and Nissan) are a flight's distance from both New York City and Atlanta. See, e.g., *Canadian Kennel Club v. Continental Kennel Club*, 1997 U.S. Dist. LEXIS 9159, 1997 WL 361991, at \*3-4, n.3 (S.D.N.Y. June 30, 1997) (finding that Canadian party witness "will have to travel to any trial [\*15] of this action whether it is adjudicated in New York or Louisiana," that "either way, travel is required, and the difference in travel time [of flying to transferee district] does not significantly affect the balance"); see also *Wechsler v. Macke Int'l Trade, Inc.*, 1999 U.S. Dist. LEXIS 19800, 1999 WL 1261251, at \*6 (S.D.N.Y. Dec. 27, 1999) ("The Court dismisses from consideration the convenience of witnesses who are located outside both the current and transferee forums."); *Telecom Technical Services, Inc. v. ROLM Co.*, 1995 U.S. Dist. LEXIS 21174, 1995 WL 874441 (E.D.Tex. Feb. 24, 1995) (noting that "it is well known that Atlanta is a major transportation hub of the Southeast" in transferring case to Northern District of Georgia in part because of convenience to counsel, parties, and witnesses).

6 Lead plaintiffs do note the fact that defendant retains a New York City based public relations firm to disseminate its news releases, and that analysts from Wachovia Securities, Needham & Company, Morgan Stanley, and Fortis Bank issued reports on defendant during the class period; these companies on "information and belief . . . [each maintain] a primary office in New York." (Berens Decl. at P2.)

[\*16] While lead plaintiffs, despite their lack of residence in this district,<sup>7</sup> have expressed a preference for litigating this matter in New York City, they also moved for appointment as lead plaintiff and lead counsel in the actions filed in Georgia. Although lead plaintiffs are under no burden on a motion to transfer, such efforts counsel against a finding of countervailing inconvenience regarding the resumption of litigation of this matter in that district. Considering the location of both party and non-party witnesses, "on balance, transfer would be significantly more convenient for the defendant and not substantially disadvantageous to plaintiff." *Intra Corp. v. Intira Corp.*, 2000 U.S. Dist. LEXIS 17039, 2000 WL 1745043, \*4 (S.D.N.Y. Nov. 27, 2000) (noting disruption and expense likely incurred by California business if trial

were to proceed in New York.) This factor, therefore, resolves in favor of transfer.

7 One lead plaintiff resides in Brooklyn, New York (Michele Fortunato); the others reside in Fairfax, Virginia (Andrew May), and Naples, Florida (Robert and Michele Billings). (Berens Decl. at P3.)

[\*17] *Location of Documents and Ease of Access to Sources of Proof*

The location of documents in this matter also weighs in favor of transfer. Defendants have noted that correspondence among employees and executives, communications and documents related to the disputed press releases and financial reports, and the "voluminous documentation" surrounding the AGI-1067 clinical trials, among other documentation, are available in defendant's sole office in Alpharetta. "This factor is clearly an important consideration in motions to transfer pursuant to 28 U.S.C. § 1404(a)." *Aquatic Amusement Assoc., Ltd. v. Walt Disney World Co.*, 734 F.Supp. 54, 58 (N.D.N.Y. 1990).

While "of course the documents at issue here could be copied and shipped to New York . . . this would impose an extra cost that is unnecessary." *Nematron Corp.*, 30 F.Supp.2d at 404; see also *Ravenswood Invest. Co., L.P.*, 2005 U.S. Dist. LEXIS 1388, 2005 WL 236440 at \*6; *In re Stillwater Mining Co. Sec. Litig.*, 2003 U.S. Dist. LEXIS 7983, 2003 WL 21087953, at \*5 (S.D.N.Y. May 12, 2003) ("While it is true that documents can be transported from state to state, for purposes of weighing transfer factors, the fact [\*18] that the documents are all currently located in [the transferee district] favors transfer."). Accordingly, transfer will facilitate access to the relevant documents and records.

*Additional factors*

It is obvious that the federal courts in both this district and the Northern District of Georgia are familiar with the legal principles necessary to resolve this case. This factor, therefore, does not favor either party. The parties also concede, more or less, that the relative means of the parties does not strongly favor either lead plaintiffs or defendants. (See Lead Pls.' Mem. at 20-21.) In terms of relative docket congestion, the Court notes that, as of September 30, 2005, the number of pending cases (civil and criminal) per active judge in the Southern District of New York was 689; in the Northern District of Georgia, it was 354. See Administrative Office of the United States Courts, Federal Court Management Statistics ("FCMS"), available at <http://www.uscourts.gov/cgi-bin/cmsd2005.pl> (last visited Mar. 29, 2006); see *In re Hanger Orthopedic Group*, 2006 U.S. Dist. LEXIS 7549, 2006 WL 466485, at \*5 (transferring case to District of Maryland and citing the FCMS database for comparative [\*19] caseloads while noting that "although docket congestion is insufficient on its own to support a transfer motion [it is] a proper factor for the Court to consider and is accorded some weight") (internal quotations omitted).

*Conclusion*

Based on the foregoing analysis, the Court concludes that the balance of factors clearly favors transfer. Defendants' motion to transfer this action [21] to the Northern District of Georgia is granted, and the Clerk of the Court is directed to effectuate the transfer.

SO ORDERED

Dated: New York, New York

March 31, 2006

Richard J. Holwell

United States District Judge



LEXSEE 1999 US DIST. LEXIS 19206

IN RE METHIONINE ANTITRUST LITIGATION

DOCKET NO. 1311

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

1999 U.S. Dist. LEXIS 19206

December 8, 1999, Filed

**SUBSEQUENT HISTORY:** Motion denied by *In re Methionine Antitrust Litig.*, 2001 U.S. Dist. LEXIS 7984 (N.D. Cal., June 11, 2001)

complaints of which were filed as actions in MDL-1285, *In re Vitamins Antitrust Litigation (Vitamins)*, support centralization in that district.<sup>2</sup>

**DISPOSITION:** [\*1] Actions transferred.

**JUDGES:** BEFORE JOHN F. NANGLE, CHAIRMAN, WILLIAM B. ENRIGHT, CLARENCE A. BRIMMER, JOHN F. GRADY, BAREFOOT SANDERS, \* LOUIS C. BECHTLE AND JOHN F. KEENAN, JUDGES OF THE PANEL.

\* Judge Sanders took no part in the decision of this matter.

**OPINION BY:** John F. Nangle

**OPINION**

**TRANSFER ORDER**

This litigation currently consists of the five actions listed on the attached Schedule A, three actions pending in the Northern District of California and two actions pending in the District of the District of Columbia.<sup>1</sup> Before the Panel are two motions for centralized pretrial proceedings pursuant to 28 U.S.C. § 1407. All responding parties agree that these antitrust class actions should be centralized, but disagree on the choice of transferee forum. Plaintiff in one Northern District of California action moves for centralization in the Northern District of California, a forum supported by plaintiffs in the other two Northern District of California, actions and four Northern District of California potential tag-along actions. Defendant Novus International, Inc. (Novus), joined by defendants Degussa-Huls Corporation (Degussa-Huls) and Rhone-Poulenc [\*2] Animal Nutrition, Inc. (Rhone-Poulenc), moves for centralization in the Eastern District of Missouri, or, alternatively, the Northern District of Georgia. Plaintiffs in the two actions pending in the District of the District of Columbia, the

1 In addition to the five actions before the Panel, the parties have advised the Panel of five other federal court actions: four actions pending in the Northern District of California and one action pending in the Northern District of Alabama. These actions and any other related actions will be treated as potential tag-along actions. See Rules 7.4 and 7.5, *R.P.J.P.M.L.*, 181 F.R.D. 1, 10-11 (1998).

2 Plaintiffs in the District of the District of Columbia actions are Animal Science Products Inc., Donaldson & Hasenbein, Inc., Pilgrims Pride Corporation, Lakeland Cash Feed Company, Inc., and Central Connecticut Cooperative Farmers Association.

[\*3] On August 31, 1999, the Panel ordered all parties involved in MDL-1311 and MDL-1285 to show cause: 1) why the five constituent actions should not be transferred to the Northern District of California, the Eastern District of Missouri, or some other federal district court for centralized pretrial proceedings in MDL-1311; or 2) why the three Northern District of California actions should not be transferred to the District of the District of Columbia for inclusion in the centralized pretrial proceedings in MDL-1285. Plaintiffs in the two actions before the Panel pending in the District of the District of Columbia support inclusion of the methionine actions in MDL-1285. All defendants and the Northern District of California plaintiffs argue against inclusion of the methionine actions in MDL-1285 and, instead, urge that these actions be centralized in a multidistrict litigation that is separate and apart from the *Vitamins* multidistrict litigation.

On the basis of the papers filed and the hearing held, the Panel finds that the five actions in the present litigation involve common questions of fact. All actions involve allegations that the same core group of defendants -- Novus, Rhone-Poulenc, [\*4] Degussa-Huls, Mitsui & Co., Ltd. and Nippon Soda Company, Ltd. -- and certain of their related entities conspired to eliminate competition, maintain market control, and raise prices for methionine in violation of Section 1 of the Sherman Antitrust Act. Thus, centralization under *Section 1407* is necessary in order to conserve the resources of the parties, their counsel and the judiciary; eliminate duplicative discovery; and prevent inconsistent pretrial rulings, particularly since plaintiffs in all actions seek to represent the same putative class of methionine purchasers, although with slight variations in the class periods.

We further find that centralization under *Section 1407* in the Northern District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In doing so, we find that although the methionine and *Vitamins* actions involve related defendants and facts, these two groups of actions lack sufficient shared questions of fact to warrant 1407 centralization together. *See, e.g., In re Amino Acid Lysine Antitrust Litig.*, 910 F. Supp. 696, 701 (J.P.M.L. 1995) (noting that three groups [\*5] of related actions involved "different products, with different uses, produced for the most part by different manufacturers, and sold by [defendants] to different alleged classes of purchasers"). Methionine is an essential amino acid, not a vitamin, used mainly as an additive to animal feed for poultry, swine and dairy cows. The *Vitamins* litigation focuses on a wide variety of vitamins, vitamins derivatives, and vitamin premixes, which are used in a broad array of industries including feed, food, pharmaceutical and cosmetics. Thus, these vitamin products are sold to a larger customer base than is methionine. Furthermore, the large majority of defendants in the *Vitamins* litigation are not defendants in the methionine actions. Finally, to date, none of the indictments, guilty pleas, or government actions relating to the *Vitamins* litigation has implicated the methionine industry.

In selecting the Northern District of California as transferee district, we note that: 1) three of the five present actions, plus four potential tag-along actions, are already pending there; 2) several antitrust actions relating to methionine are pending in California state courts; and 3) California, [\*6] a state with considerable poultry farming and animal feed operations, has a strong nexus to the methionine industry. Furthermore, for a litigation nationwide in scope with the five main defendants located in differing parts of the United States and in Japan, San Francisco is as conveniently located as any other suggested transferee district. Finally, the California ac-

tions are assigned to a senior judge who is highly experienced in complex litigation and whose caseload burden is relatively low.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on the attached Schedule A and pending other than in the Northern District of California be, and the same hereby are, transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Samuel Conti for coordinated or consolidated pretrial proceedings with the actions on Schedule A that are pending in that district.<sup>3</sup>

3 For purposes of clarity, further explanation is hereby given regarding *Animal Science Products, Inc., et al. v. Rhone-Poulenc S.A., et al.*, D. District of Columbia, C.A. No. 1:99-MS-197 (First Amended Complaint for Antitrust Violations Related to Methionine filed August 3, 1999, docket entry # 53 in MDL-1285). Although styled as a First Amended Complaint by the four plaintiffs who filed it, this document is self-contained in that it only deals with methionine allegations and is therefore separate and distinct on its face from the other complaints, amended or otherwise, filed in MDL-1285 by these same four plaintiffs. Thus, for purposes of 1407 we view this First Amended Complaint as, in essence, a separate action, like the complaint in *Central Connecticut Cooperative Farmers Association v. Rhone-Poulenc S.A., et al.*, D. District of Columbia, C.A. No. 1:99-2210.

[\*7] FOR THE PANEL:

John F. Nangle

Chairman

ATTACHMENT

#### SCHEDULE A

MDL-1311 -- In re Methionine Antitrust Litigation

Northern District of California

*A.L. Gilbert v. Rhone-Poulenc S.A., et al.*, C.A. No. 3:99-3491

*Feedstuffs Processing Co. v. Novus International, Inc., et al.*, C.A. No. 3:99-3492

*AAA Egg Farm v. Rhone-Poulenc S.A., et al.*, C.A. No. 3:99-3999

District of District of Columbia

*Animal Science Products, Inc., et al.*  
*v. Rhone-Poulenc S.A., et al.*, C.A. No.  
1:99-MS-197 (First Amended Complaint  
for Antitrust Violations Related to Me-  
thionine filed August 3, 1999, docket en-  
try # 53 in MDL-1285)

*Central Connecticut Cooperative*  
*Farmers Association v. Rhone-Poulenc*  
*S.A., et al.*, C.A. No. 1:99-2210